# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, D.C. 20549**

## FORM 8-K

**CURRENT REPORT**
**PURSUANT TO SECTION 13 OR 15(d) OF THE**
**SECURITIES EXCHANGE ACT OF 1934**
**DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): May 27, 2022**

# TherapeuticsMD, Inc.
(Exact Name of Registrant as Specified in its Charter)

| **Nevada** | **001-00100** | **87-0233535** |
|---|---|---|
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

**951 Yamato Road, Suite 220**
**Boca Raton, FL 33431**
(Address of Principal Executive Office) (Zip Code)

Registrant's telephone number, including area code: **(561)** 961-1900

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class | Trading Symbol | Name of Each Exchange on Which Registered |
|---|---|---|
| Common Stock, par value $0.001 per share | TXMD | The Nasdaq Stock Market LLC |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230-405) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2). Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

**Item 1.01 Entry into a Material Definitive Agreement.**

*Agreement and Plan of Merger*

On May 27, 2022, TherapeuticsMD, Inc., a Nevada corporation (the "Company"), Athene Parent, Inc., a Nevada corporation ("Parent"), and Athene Merger Sub, Inc., a Nevada corporation and a wholly owned subsidiary of Parent ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement"). Parent is an affiliate of investment funds advised by EW Healthcare Partners ("EW"). Capitalized terms used herein and not otherwise defined have the meaning set forth in the Merger Agreement.

Pursuant to the Merger Agreement, and upon the terms and subject to the conditions thereof, Merger Sub will commence a cash tender offer (the "Offer") to acquire all of the issued and outstanding shares of the common stock, par value $0.001 per share, of the Company ("Common Stock") at a price per share of $10.00, in cash, without interest (the "Offer Price"), subject to any withholding of taxes required by applicable law. The Offer will initially remain open for 20 business days from the date of commencement of the Offer, subject to extension under certain circumstances.

The Merger Agreement provides that, following the consummation of the Offer, Merger Sub will merge with and into the Company (the "Merger"), with the Company surviving the Merger as a wholly owned subsidiary of Parent. The Merger will be governed by Section 92A.133 of the Nevada Revised Statutes (the "NRS"), with no stockholder vote required to consummate the Merger. In the Merger, each outstanding share of Common Stock (other than shares of Common Stock held in the treasury of the Company, owned by a wholly-owned subsidiary of the Company or by Parent, Merger Sub, or any other subsidiary of Parent) will be converted into the right to receive cash in an amount equal to the Offer Price, without interest.

The Board of Directors of the Company (the "Board") unanimously (i) determined that the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, were fair to and in the best interests of the Company and its stockholders, (ii) adopted and approved and declared advisable the Merger Agreement and the transactions contemplated thereby, and (iii) recommended, by resolution, that the stockholders of the Company accept the Offer and tender their shares of Common Stock pursuant to the Offer.

Immediately prior to the effective time of the Merger (the "Effective Time"), except as provided in the Merger Agreement, each option to purchase Common Stock, whether vested or unvested, outstanding and unexercised immediately prior to the Effective Time will vest (if unvested) and be cancelled without any consideration in respect thereof. Immediately prior to the Effective Time, subject to the Merger Agreement, each unvested Company restricted stock unit award (other than a Company restricted performance-based stock unit award) that is outstanding will fully vest and will be cancelled and converted into the right to receive an amount (subject to any applicable withholding tax) in cash equal to the product of the Offer Price and the number of shares subject to such Company restricted stock unit award. Immediately prior to the Effective Time, subject to the Merger Agreement, each performance-based stock unit award of the Company that is outstanding will be cancelled and converted into the right to receive an amount (subject to any applicable withholding tax) in cash equal to the product of the Offer Price and the number of shares that vest at target vesting level for such performance-based stock unit award.

Pursuant to the terms of the Merger Agreement, following the date of the Merger Agreement, the Company will take all actions with respect to the Company's 2020 Employee Stock Purchase Plan (the "ESPP") to provide that (i) with respect to any offering periods in effect as of the date of the Merger Agreement (the "Current Purchase Period"), no employee who is not a participant in the ESPP as of the date of the Merger Agreement may become a participant in the ESPP and no employee participating in the Current Purchase Period may increase the percentage amount of his or her payroll deduction election in effect immediately prior to the date of the Merger Agreement, (ii) there will be no new offering periods following the Current Purchase Period, and (iii) in all events, the Company will terminate the ESPP immediately prior to, and subject to the occurrence of, the Effective Time. The Current Purchase Period will end on November 14, 2022; provided, that if the Effective Time is prior to November 14, 2022, the Company will end the Current Purchase Period immediately prior to the Effective Time, and all outstanding purchase rights under the ESPP will be automatically exercised, in accordance with the terms of the ESPP, at such time, and any shares of Common Stock purchased under the ESPP will be cancelled and converted into the right to receive the Offer Price.

The Merger Agreement contains representations and warranties and covenants of the parties customary for a transaction of this nature, including covenants regarding the operation of the Company's business prior to the Effective Time.

The Company is also subject to customary restrictions on its ability to solicit alternative acquisition proposals from third parties and to provide non-public information to, and participate in discussions and engage in negotiations with, third parties regarding alternative acquisition proposals. The Merger Agreement also contains customary covenants requiring the Board, subject to certain exceptions, to recommend that the Company's stockholders accept the Offer and tender their shares of Common Stock to Merger Sub pursuant to the Offer (the "Company Board Recommendation"). Prior to the acceptance time of the Offer, the Board may withhold, withdraw, qualify, or modify the Company Board Recommendation in response to a Company Intervening Event or in response to an

acquisition proposal that the Board determines in good faith constitutes a Superior Proposal, in each case, subject to complying with the notice obligations and other specified conditions set forth in the Merger Agreement.

Merger Sub has agreed to commence the Offer as promptly as practicable from the date of the Merger Agreement (but in no event later than June 6, 2022). The consummation of the Offer will be conditioned on (i) the number of shares of Common Stock validly tendered and not properly withdrawn in accordance with the terms of the Offer (excluding any shares tendered pursuant to guaranteed delivery procedures that have not yet been "received" as such term is used in NRS 92A.133(g)), when added to any shares of Common Stock owned by Merger Sub, representing, at the acceptance time of the Offer (the "Acceptance Time"), at least a majority of the voting power of the then issued and outstanding shares of Common Stock, (ii) the accuracy of the representations and warranties of the Company and compliance by the Company with the covenants contained in the Merger Agreement, subject to qualifications, (iii) there not having been a Company Material Adverse Effect with respect to the Company since the date of the Merger Agreement, (iv) the absence of any default or event of default under Financing Agreement (as defined below) and (v) other customary closing conditions.

The consummation of the Merger will be conditioned on (i) no order or other legal restraint that prohibits the consummation of the Merger being in effect, (ii) Merger Sub (or Parent on its behalf) has accepted for payment all shares of Common Stock validly tendered and not validly withdrawn pursuant to the Offer and (iii) the absence of any default or event of default under the Financing Agreement.

The Merger Agreement contains certain termination rights for both the Company and Parent, including that, subject to certain limitations, (i) the Company or Parent may terminate the Merger Agreement if the Merger is not consummated by 11:59 p.m. Eastern Time on July 13, 2022 (the "Termination Date"), (ii) the Company and Parent may mutually agree to terminate the Merger Agreement, (iii) prior to the acceptance time of the Offer, the Company may terminate the Merger Agreement to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal, subject to the Company paying Parent a termination fee of $3,250,000 and the other terms and conditions set forth in the Merger Agreement, (iv) Parent may terminate the Merger Agreement because the Board changes the Company Board Recommendation or in the event of a Willful Breach by the Company of its no-shop covenants, and (v) the Company may terminate the Merger Agreement if Merger Sub does not commence the Offer by June 6, 2022, or does not extend the Offer when required to do so, or does not accept for payment the shares of Common Stock after the Expiration of the Offer when the conditions to the Offer have been satisfied.

The Company will be required to pay the termination fee of $3,250,000 in the event that (i) the Company terminates the Merger Agreement to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal, (ii) Parent terminates the Merger Agreement because the Board changes the Company Board Recommendation, or (iii) Parent terminates the Merger Agreement either due to a breach by the Company that causes a condition to the Offer not to be satisfied or if the Company willfully breaches the no-shop provisions of the Merger Agreement. In addition, the Company will be required to pay the termination fee under specified circumstances if, within 12 months after the termination of the Merger Agreement, the Company enters into or consummates a Competing Acquisition Transaction.

Pursuant to an equity commitment letter, dated as of May 27, 2022 (the "Equity Commitment Letter"), and subject to the terms thereof, EW Healthcare Partners Fund 2, L.P., a Delaware limited partnership (the "Investor"), committed to provide Parent, at the Effective Time, with an equity contribution of up to approximately $93,000,000, the proceeds of which will be used by Parent to pay the Offer Price, Merger consideration and certain fees and expenses required to be paid by Parent at the closing of the Merger pursuant to, and in accordance with, the Merger Agreement. Pursuant to Amendment No. 11 (as defined below) to the Company's Financing Agreement, and subject to the terms and conditions therein, the Lenders (as defined below) have agreed to roll-over the existing indebtedness of the Company. Pursuant to the Merger Agreement and the Equity Commitment Letter, the Investor is required to pay to the Company any amounts for monetary damages awarded to the Company against Parent or Merger Sub for any willful breach of the Merger Agreement up to a cap of $5,110,000.

The Merger Agreement also provides that the Company, on one hand, or Parent and Merger Sub, on the other hand, may specifically enforce the obligations under the Merger Agreement, except that the Company may only cause Parent's equity financing commitment to be funded and the Merger to be consummated in circumstances where the conditions to Parent's and Merger Sub's obligations to consummate the Merger are satisfied.

The foregoing description of the Merger Agreement is not complete and is qualified in its entirety by reference to the Merger Agreement, which is attached as Exhibit 2.1 to this report and incorporated herein by reference.

The Merger Agreement and the foregoing description of the Merger Agreement have been included to provide investors and stockholders with information regarding the terms of the Merger Agreement. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Merger Agreement were made only as of specified dates for the purposes of such agreement, were solely for the benefit of the parties to such agreement and may be subject to qualifications and limitations agreed upon by such parties. In particular, in reviewing the representations, warranties and covenants contained in the Merger Agreement and discussed in the foregoing description, it is important to bear in mind that such representations, warranties and covenants were negotiated with the principal purpose of allocating risk between the parties, rather than establishing matters as facts.

Such representations, warranties and covenants may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and reports and documents filed with the U.S. Securities and Exchange Commission (the "SEC"). Investors and stockholders generally are not third-party beneficiaries under the Merger Agreement. Accordingly, investors and stockholders should not rely on such representations, warranties and covenants as characterizations of the actual state of facts or circumstances described therein. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the parties' public disclosures.

*Sixth Street Financing Agreement Amendments*

On May 27, 2022, the Company entered into Amendment No. 10 ("Amendment No. 10") to that certain Financing Agreement, dated as of April 24, 2019, as amended, with Sixth Street Specialty Lending, Inc., as administrative agent, the various lenders from time to time party thereto (the "Lenders"), and certain of the Company's subsidiaries party thereto from time to time as guarantors (the "Financing Agreement"). Pursuant to Amendment No. 10, among other amendments, (i) interest payments under the Financing Agreement were paused, such that interest on each term loan shall be payable in cash and in arrears (a) upon any prepayment of that term loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid and (b) on the maturity date, (ii) the minimum cash covenant was set at $10,000,000, (iii) the maturity date of the Financing Agreement was amended to July 13, 2022, (iv) the termination of the Merger Agreement was added as an event of default, and (v) the Company agreed to a paid in kind amendment fee of $1,780,000 (the "Amendment No. 10 PIK Fee"), which fee was added to the principal amount of the loans under the Financing Agreement.

On May 27, 2022, the Company entered into Amendment No. 11 ("Amendment No. 11") to the Financing Agreement. Amendment No. 11 contains amendments to the Financing Agreement that would go into effect upon the satisfaction of certain conditions on or before July 13, 2022 (the "Amendment Effective Date"), including (i) the consummation of the Merger, (ii) the payment in cash of (a) all accrued and unpaid interest under the Financing Agreement through and including the Amendment Effective Date and (b) all fees, costs, expenses and taxes then payable pursuant to Section 2.7 or 10.2 of the Financing Agreement, and (iii) the delivery to the administrative agent of certain customary documents, including a Pledge Agreement, executed by Parent, with respect to the pledge of 100% of the capital stock of the Company

The foregoing descriptions of Amendment No. 10 and Amendment No. 11 are not complete and are qualified in their entirety by reference to the full text of Amendment No. 10 and Amendment No. 11, which are filed as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K, respectively, and are incorporated herein by reference.

**Item 8.01 Other Events.**

On May 31, 2022, the Company and EW issued a joint press release announcing the execution of the Merger Agreement. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

**Cautionary Notes Regarding Forward Looking Statements**

Certain statements in this communication, including, without limitation, statements regarding the proposed transaction, plans and objectives, and management's beliefs, expectations or opinions, may contain forward-looking information within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to future, not past, events and often address expected future actions and expected future business and financial performance. Forward-looking statements may be identified by the use of words such as "believe," "will," "should," "estimate," "anticipate," "potential," "expect," "intend," "plan," "may," "subject to," "continue," "if" and similar words and phrases. These forward-looking statements are not guarantees of future events and involve risks, uncertainties and assumptions that are difficult to predict.

Actual results, developments and business decisions may differ materially from those expressed or implied in any forward-looking statements as a result of numerous factors, risks and uncertainties over which the Company or EW Healthcare Partners, as applicable, have no control. These factors, risks and uncertainties include, but are not limited to, the following: (1) the conditions to the completion of the proposed transaction may not be satisfied, including uncertainties as to how many of the Company's stockholders will tender their shares in the tender offer and the possibility that if the transaction does not close by July 13, 2022 , or the Company is unable to satisfy the minimum qualified cash covenant under the Company's Financing Agreement, it will constitute an event of default under the Company's Financing Agreement and the Company may not continue as a going concern; (2) the parties' ability to complete the proposed transaction contemplated by the Merger Agreement in the anticipated timeframe or at all; (3) the occurrence of any event, change or other circumstance that could give rise to the termination of the transaction agreement between the parties to the proposed transaction (including that if the transaction agreement is terminated it is an event of default under the Company's Financing Agreement and the Company may not continue as a going concern); (4) the effect of the announcement or pendency of the proposed transaction on business relationships, operating results, and business generally; (5) risks that the proposed transaction disrupts current plans and operations and potential difficulties in employee retention as a result of the proposed transaction; (6) risks related to diverting management's attention from ongoing business operations; (7) the outcome of any legal proceedings that may be instituted related to

the proposed transaction or the transaction agreement between the parties to the proposed transaction; (8) the amount of the costs, fees, expenses and other charges related to the proposed transaction; (9) the risk that competing offers or acquisition proposals will be made; (10) general economic conditions, particularly those in the life science and medical device industries; (11) stock trading prices, including the impact of the proposed transaction on the Company's stock price and the corresponding impact that failure to close the proposed transaction would be expected to have on the Company's stock price, particularly in relation to the Company's current and future capital needs and its ability to raise additional funds to finance its future operations in the event the proposed transaction does not close; (12) the participation of third parties in the consummation of the proposed transaction; and (13) other factors discussed from time to time in the reports of the Company filed with the Securities and Exchange Commission (the "SEC"), including the risks and uncertainties contained in the sections titled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" in the Company's most recent Annual Report on Form 10-K, as filed with the SEC on March 23, 2022, and related sections in the Company's subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, all of which are available free of charge at http://www.sec.gov or under the "Investors & Media" section on the Company's website at www.therapeuticsmd.com.

Forward-looking statements reflect the views and assumptions of management as of the date of this communication with respect to future events. The Company does not undertake, and hereby disclaims, any obligation, unless required to do so by applicable laws, to update any forward-looking statements as a result of new information, future events or other factors. The inclusion of any statement in this communication does not constitute an admission by the Company or any other person that the events or circumstances described in such statement are material.

**Additional Information about the Transaction and Where to Find It**

The tender offer has not yet commenced. This communication is neither an offer to buy nor a solicitation of an offer to sell any securities of the Company, nor is it a recommendation by the Company, its management or Board of Directors that any investors sell or otherwise tender any securities of the Company in connection with the transactions described elsewhere in this communication. The solicitation and the offer to buy shares of the Company's common stock will only be made pursuant to a tender offer statement on Schedule TO, including an offer to purchase, a letter of transmittal and other related materials that an affiliate of EW Healthcare Partners intends to file with the SEC. In addition, the Company will file with the SEC a Recommendation Statement on Schedule 14D-9 with respect to the tender offer. Once filed, investors will be able to obtain the tender statement on Schedule TO, the offer to purchase, the Recommendation Statement of the Company on Schedule 14D-9 and related materials filed with the SEC with respect to the tender offer and the merger, free of charge at the website of the SEC at www.sec.gov or from the information agent named in the tender offer materials. Investors may also obtain, at no charge, the documents filed with or furnished to the SEC by the Company under the "Investors & Media" section of the Company's website at www.therapeuticsmd.com. Investors are advised to read these documents when they become available, including the Recommendation Statement of the Company and any amendments thereto, as well as any other documents relating to the tender offer and the merger that are filed with the SEC, carefully and in their entirety prior to making any decisions with respect to whether to tender their shares in the tender offer because such documents contain important information, including the terms and conditions of the tender offer.

**Item 9.01 Financial Statements and Exhibits.**

(d) *Exhibits*

Exhibit Index

| Exhibit No. | Description |
|---|---|
| 2.1* | Agreement and Plan of Merger, dated as of May 27, 2022, among TherapeuticsMD, Inc., Athene Parent, Inc. and Athene Merger Sub, Inc. |
| 10.1† | Amendment No. 10 to Financing Agreement, dated May 27, 2022, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., Sixth Street Specialty Lending, Inc., Top IV Talents, LLC and Tao Talents, LLC. |
| 10.2† | Amendment No. 11 to Financing Agreement, dated May 27, 2022, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., Sixth Street Specialty Lending, Inc., Top IV Talents, LLC and Tao Talents, LLC. |
| 99.1 | Joint Press Release, dated May 31, 2022. |
| 104 | Cover Page Interactive Data File (the cover page tags are embedded within the Inline XBRL document). |

* Schedules to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the SEC.

† Certain of the exhibits and schedules to this exhibit have been omitted in accordance with Item 601(a)(5) of Regulation S-K. The Company agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 31, 2022

THERAPEUTICSMD, INC.

/s/ Michael C. Donegan

Michael C. Donegan
Interim Chief Financial Officer, Chief Accounting Officer and Vice President Finance

**Exhibit 2.1**

**[***] CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(B)(10). SUCH EXCLUDED INFORMATION IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.**

# AGREEMENT AND PLAN OF MERGER

BY AND AMONG:

**ATHENE PARENT, INC.**

**ATHENE MERGER SUB, INC.**

**AND**

**THERAPEUTICSMD, INC.**

DATED AS OF

**MAY 27, 2022**

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# AGREEMENT AND PLAN OF MERGER

This **Agreement and Plan of Merger** ("***Agreement***") is made and entered into as of May 27, 2022 (the "***Agreement Date***") by and among Athene Parent, Inc., a Nevada corporation ("***Parent***"), Athene Merger Sub, Inc., a Nevada corporation and wholly owned direct subsidiary of Parent ("***Merger Sub***"), and TherapeuticsMD, Inc., a Nevada corporation (the "***Company***"). Each of Parent, Merger Sub and the Company are referred to herein as a "***Party***" and collectively as the "***Parties***". Certain capitalized terms used in this Agreement are defined in Exhibit A.

## RECITALS

WHEREAS, the parties hereto intend that, on the terms and subject to the conditions set forth herein, Merger Sub shall merge with and into the Company, with the Company being the surviving corporation (the "***Merger***");

WHEREAS, pursuant to this Agreement, Merger Sub has agreed to commence a tender offer (as may be amended, supplemented or modified, the "***Offer***") to purchase all of the outstanding shares of Company Common Stock (such shares of Company Common Stock being hereinafter referred to as the "***Shares***"), for a price per Share of $10.00 (such amount or any greater amount per Share that may be paid pursuant to the Offer, and as may be adjusted in accordance with this Agreement, the "***Offer Price***");

WHEREAS, as soon as practicable following the Offer Closing, Merger Sub shall merge with and into the Company, on the terms and subject to the conditions set forth in this Agreement, with the Company being the surviving corporation, with the Merger to be effected pursuant to Section 92A.133 and the other applicable provisions of the Nevada Revised Statutes (the "***NRS***"), whereby each Share issued and outstanding immediately prior to the Effective Time (other than Shares to be canceled in accordance with Section 2.2(a)) will be converted into the right to receive the Offer Price, payable to the holder in cash, without interest, subject to any withholding of Taxes as contemplated by this Agreement;

WHEREAS, the board of directors of the Company (the "***Company Board***") has unanimously (i) determined that this Agreement and the Transactions, including the Offer and the Merger, are fair to and in the best interests of the Company and its stockholders, (ii) adopted, approved and declared advisable this Agreement and the Transactions, and (iii) recommended, by resolution, that holders of Company Common Stock (as defined herein) accept the Offer and tender their Shares to Merger Sub pursuant to the Offer;

WHEREAS, each of the boards of directors of Parent and Merger Sub has adopted and approved this Agreement and declared it advisable for Parent and Merger Sub, respectively, to enter into this Agreement and the Transactions, including the Offer and the Merger, upon the terms and subject to the conditions set forth herein;

WHEREAS, Parent shall, or shall cause the direct holder of the stock of Merger Sub to, immediately following execution and delivery of this Agreement, approve this Agreement in its capacity as sole stockholder of Merger Sub;

WHEREAS, as a condition and inducement to the Company's willingness to enter into this Agreement, Parent and Merger Sub have delivered to the Company previously or concurrently with the execution of the Agreement, a commitment letter between Parent and the Investor, pursuant to which the Investor has committed, subject to the terms and conditions thereof, to invest in Parent, directly or indirectly, the cash amounts set forth therein (the "***Equity Commitment Letter***"); and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement and to set forth certain conditions to the Offer and the Merger.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement agree as follows:

**ARTICLE I**
**THE OFFER**

Section 1.1 The Offer.

(a) Provided that this Agreement shall not have been terminated in accordance with Section 8.1, and subject to the Company having provided the information required to be provided pursuant to Section 1.2(b), as promptly as practicable after the Agreement Date, and in any event on or before June 6, 2022 (the date of such commencement, the "***Offer Commencement Date***"), Merger Sub shall (and Parent shall cause Merger Sub to) commence (within the meaning of Rule 14d-2 under the Exchange Act) the Offer to purchase all of the Shares at a price per share equal to the Offer Price. The Parties hereby acknowledge and agree that the Offer shall constitute an "offer" as defined in NRS 92A.133(4)(e).

(b) The obligation of Merger Sub to, and of Parent to cause Merger Sub to, accept for payment and pay for any Shares validly tendered and not validly withdrawn pursuant to the Offer shall be subject only to the satisfaction, or waiver by Merger Sub or Parent, of (x) the condition (the "***Minimum Condition***") that at least that number of shares of Company Common Stock validly tendered and not validly withdrawn prior to the Expiration Date of the Offer (other than shares of Company Common Stock tendered by guaranteed delivery that have not yet been "received," as such term is used in NRS 92A.133(g), by the depositary for the Offer), when added to any shares of Company Common Stock already owned by Merger Sub, if any, equals a majority of the voting power of the then issued and outstanding shares of Company Common Stock, and (y) the other conditions set forth in Annex A (the conditions described in clauses (x) and (y) are collectively referred to as the "***Offer Conditions***"). Subject to the satisfaction, or waiver by Merger Sub or Parent, of the Offer Conditions, Merger Sub shall (and Parent shall cause Merger Sub to) consummate the Offer in accordance with its terms and accept for payment (the time of such acceptance for payment, the "***Acceptance Time***") and pay for all Shares validly tendered and not validly withdrawn pursuant to the Offer as promptly as practicable (and in any event within three Business Days) after the Expiration Date and in any event in compliance with Rule 14e-1(c) under

the Exchange Act. The Offer Price payable in respect of each Share validly tendered and not validly withdrawn pursuant to the Offer shall be paid to the seller of such Share in cash, without interest, subject to the deduction or withholding of any Taxes as contemplated by this Agreement, on the terms and subject to the conditions set forth in this Agreement. The time scheduled for payment for shares of Company Common Stock accepted for payment pursuant to and subject to the conditions of the Offer is referred to in this Agreement as the "***Offer Closing***", and the date on which the Offer Closing occurs is referred to in this Agreement as the "***Offer Closing Date***."

(c) The Offer shall be made by means of an offer to purchase that describes the terms and conditions of the Offer as set forth in this Agreement. Merger Sub and Parent expressly reserve the right to waive (in whole or in part) any Offer Condition at any time and from time to time, to increase the Offer Price or to make any other changes in the terms and conditions of the Offer; provided, however, that without the prior written consent of the Company, Merger Sub shall not (i) decrease the Offer Price, (ii) change the form of consideration payable in the Offer, (iii) reduce the number of Shares to be purchased in the Offer, (iv) amend or modify any of the Offer Conditions in a manner that is adverse to the holders of Shares or impose conditions to the Offer in addition to the Offer Conditions, (v) amend, modify or waive the Minimum Condition or (vi) extend or otherwise change the Expiration Date in a manner other than pursuant to and in accordance with this Agreement.

(d) Unless extended as provided in this Agreement, the Offer shall initially be scheduled to expire at midnight, New York City time, at the end of the day on the date that is twenty Business Days (calculated as set forth in Rule 14d-1(g)(3) and Rule 14e-1(a) under the Exchange Act) after the Offer Commencement Date (the "***Initial Expiration Date***"). Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, and subject to the last proviso of this Section 1.1(d), unless this Agreement shall have been terminated in accordance with Section 8.1, (i) if, at midnight, New York City time, at the end of the day on the Initial Expiration Date or any subsequent date and time as of which the Offer is scheduled to expire, any Offer Condition is not satisfied or, to the extent waivable in accordance with the terms hereof and applicable Law, has not been waived by Merger Sub or Parent, Merger Sub shall (subject to the rights or remedies of the parties hereto hereunder, including under Article VIII), extend (and re-extend) the Offer and its expiration date beyond the Initial Expiration Date (the Initial Expiration Date as it may be extended herein is referred to as the "***Expiration Date***") for one or more periods, in consecutive increments of up to ten Business Days each (each such increment to end at 11:59 p.m., New York City time, on the last Business Day of such increment), the length of each such period to be determined by Parent in its reasonable discretion (or such longer period as Parent and the Company may mutually agree) to permit such Offer Condition to be satisfied (it being understood, for the avoidance of doubt, that the Offer shall not be extended pursuant to this sentence if all Offer Conditions have been satisfied or waived); provided, that if at any then-scheduled expiration of the Offer, all of the Offer Conditions (other than the Minimum Condition and any Offer Conditions that are by their nature to be satisfied at the Offer Acceptance Time) have been satisfied or waived (to the extent waivable in accordance with the terms hereof and applicable Law) and the Minimum Condition has not been satisfied, Merger Sub shall not be required to (and Parent shall not be required to cause Merger Sub to) extend the Offer for more than two additional consecutive increments of five (5) Business Days each (or such shorter periods as may be agreed to by the Company and Merger Sub); provided, however, that in no event shall Merger Sub (x) be required to extend the Expiration Date to any date beyond the Termination Date

or (y) without the prior written consent of the Company be permitted to extend the Expiration Date to any date beyond the Termination Date. In addition, Merger Sub shall, with or without the written consent of the Company, extend the Offer for any minimum period required by any rule or regulation of the SEC or its staff, any rule or regulation of Nasdaq or any other applicable Law, in each case, applicable to the Offer.

(e) Merger Sub shall not terminate the Offer prior to any scheduled Expiration Date without the prior written consent of the Company, except in connection with a termination of this Agreement permitted in accordance with the terms of Section 8.1. In the event that this Agreement is terminated pursuant to Section 8.1, whether or not the Expiration Date has occurred, Merger Sub shall (and Parent shall cause Merger Sub to) promptly (and in any event within twenty-four hours of such termination), irrevocably and unconditionally terminate the Offer, not acquire any Shares pursuant thereto, and cause any depositary acting on its behalf to promptly return in accordance with applicable Law all tendered Shares to the registered holders thereof.

(f) On the Offer Commencement Date, Merger Sub and Parent shall (i) file or cause to be filed with the SEC, in accordance with Rule 14d-3 under the Exchange Act, a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments, supplements and exhibits thereto, the "***Schedule TO***") that will contain or incorporate by reference the related offer to purchase the Shares pursuant to the Offer, the form of the related letter of transmittal, the summary advertisement and other ancillary Offer documents pursuant to which the Offer will be made and instruments pursuant to which the Offer will be made (collectively, and together with all exhibits, amendments and supplements thereto, the "***Offer Documents***"); and (ii) cause the Schedule TO and related Offer Documents to be disseminated to holders of Shares in accordance with applicable federal securities Laws. The Company shall promptly furnish to Merger Sub and Parent in writing all information concerning the Company and its stockholders that may be required by applicable Law to be set forth in the Offer Documents or reasonably requested in connection with any action contemplated by this Section 1.1(f). Except with respect to any amendments filed in connection with a Change of Recommendation (or, prior to a Change of Recommendation, the applicable event that may give rise to a Change of Recommendation), the Company and its counsel shall be given reasonable opportunity to review and comment on the Offer Documents (including any amendment or supplement thereto) prior to the filing thereof with the SEC, and Merger Sub and Parent shall give reasonable and good faith consideration to any comments made by the Company and its counsel. Each of Merger Sub, Parent and the Company agrees to promptly correct any information provided by it for use in the Offer Documents if and to the extent that such party becomes aware that such information shall have become false or misleading in any material respect or as otherwise required by applicable Law. Merger Sub and Parent further agree to take all steps necessary to cause the Offer Documents as so corrected (if applicable) to be filed with the SEC and disseminated to holders of Shares, in each case as and to the extent required by applicable Laws. Upon receipt of any written or oral comments by Merger Sub, Parent or their counsel from any Governmental Authority or its staff with respect to the Offer Documents, or any request from any Governmental Authority or its staff for amendments or supplements to the Offer Documents, Merger Sub and Parent agree to (i) promptly provide the Company and its counsel with a copy of any such written comments or requests (or a description of any such oral comments or requests); (ii) provide the Company and its counsel a reasonable opportunity to comment on any proposed response thereto, and to give reasonable and good faith consideration to any such comments made by the Company and its counsel; (iii) provide the

Company and its counsel an opportunity to participate with Merger Sub, Parent or their counsel in any materials discussions or meetings with any Governmental Authority or its staff regarding the Offer Documents; and (iv) provide the Company with copies of any written comments or responses submitted by Merger Sub and Parent in response thereto.

(g) The Offer Price shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock), reorganization, recapitalization, reclassification, combination, merger, issuer tender offer, exchange of shares or other like change with respect to Company Common Stock occurring on or after the Agreement Date and prior to Merger Sub's acceptance for payment of, and payment for, Company Common Stock tendered in the Offer, and such adjustment to the Offer Price shall provide to the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such action and shall as so adjusted from and after the date of such event, be the Offer Price; provided, however, that nothing in this Section 1.1(g) shall be construed to permit the Company to take any action with respect to the Company Common Stock that is prohibited by the terms of this Agreement.

(h) Parent shall be responsible for 100% of the fees, costs and expenses (except for the fees, costs and expenses of the Company's advisors), including any filings fees, associated with the preparation, filing and mailing of the Offer Documents and the Schedule 14D-9.

Section 1.2 Company Actions.

(a) As promptly as commercially practicable after the Offer Documents are filed with the SEC (and in any event within four (4) Business Days after the filing of the Schedule TO), the Company shall file or cause to be filed with the SEC a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 with respect to the Offer (together with all exhibits, amendments and supplements thereto, the "***Schedule 14D-9***") that, subject to Section 6.3(d) and Section 6.3(e) shall contain and reflect the Company Board Recommendation. The Company shall also include in the Schedule 14D-9 the opinion of the Company Financial Advisor. The Company hereby consents to the inclusion of the Company Board Recommendation in the Offer Documents and to the inclusion of a copy of the Schedule 14D-9 with the Offer Documents mailed or furnished to holders of Shares. Each of Merger Sub and Parent shall promptly furnish to the Company in writing all information concerning Merger Sub and Parent that may be required by applicable Law to be set forth in the Schedule 14D-9 or reasonably requested in connection with any actions contemplated by this Section 1.2(a). The Company shall cause the Schedule 14D-9 to be filed with the SEC pursuant to this Section 1.2(a) to be disseminated to the Company's stockholders as and to the extent required by the Exchange Act concurrently with the dissemination of the Schedule TO to the holders of Company Common Stock by Merger Sub. Except with respect to any amendments filed in connection with a Change of Recommendation (or, prior to a Change of Recommendation, the applicable event that may give rise to a Change of Recommendation), the Company agrees to provide Merger Sub, Parent and their counsel reasonable opportunity to review and comment on the Schedule 14D-9 prior to the filing thereof with the SEC, and the Company shall give reasonable and good faith consideration to any comments made by Merger Sub, Parent and their counsel. Each of the Company, Merger Sub and Parent agrees to promptly correct any information provided by it for use in the Schedule 14D-9 if and to the extent such party has become aware that such information shall have become

false or misleading in any material respect. The Company further agrees to take all steps necessary to cause the Schedule 14D-9, as so corrected, to be filed with the SEC and disseminated to the Company's stockholders, in each case as and to the extent required by applicable Law. Upon receipt of any written or oral comments or requests for amendments or supplements by the Company or its counsel from any Governmental Authority or its staff with respect to the Schedule 14D-9, the Company agrees to (i) promptly provide Merger Sub, Parent and their counsel with a copy of any such written comments or requests for amendments or supplements (or a description of any such oral comments); (ii) provide Merger Sub, Parent and their counsel a reasonable opportunity to comment on any proposed response thereto, and to give reasonable and good faith consideration to any such comments made by Merger Sub, Parent and their counsel prior to responding to any such comments or requests; (iii) provide the Company and its counsel an opportunity to participate with Merger Sub, Parent or their counsel in any materials discussions or meetings with any Governmental Authority or its staff regarding the Schedule 14D-9; and (iv) provide Merger Sub or Parent with copies of any written comments or responses submitted by the Company in response thereto.

(b) In connection with the Offer, no later than two (2) Business Days prior to the Offer Commencement Date, the Company shall cause its transfer agent to promptly furnish Merger Sub and Parent with (i) mailing labels containing the names and addresses of all record holders of Shares; and (ii) security position listings of Shares held in stock depositories, each as of a recent date, and of those persons who become record or beneficial owners subsequent to such date, together with other readily available listings and computer files containing names, addresses and security position listings of record holders and beneficial owners of Shares. The Company shall furnish Merger Sub and Parent with such additional information, including updated listings and computer files of record holders and beneficial holders of Shares, mailing labels, addresses, and security position listings, and such other assistance as Merger Sub, Parent or their agents may reasonably request in communicating the Offer to the record and beneficial holders of Shares. Parent and Merger Sub shall use such information only in connection with the Offer and the Merger and shall take such actions as may be reasonably required to protect the unauthorized disclosure or use of information received by it pursuant to this Section 1.2(b) and shall use reasonable best efforts to have such information returned or destroyed in accordance with the terms of the Confidentiality Agreement governing such information.

## ARTICLE II
## THE MERGER

Section 2.1 The Merger.

(a) Upon the terms and subject to the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted by applicable Law) of such conditions at the Closing), at the Effective Time, Merger Sub shall be merged with and into the Company in accordance with the NRS whereupon the separate existence of Merger Sub shall cease, and the Company shall be the surviving corporation (the "***Surviving Corporation***") as a wholly owned Subsidiary of Parent. The Merger shall be effected pursuant to NRS 92A.133 and shall be effected as soon as practicable following consummation of the Offer; provided, however, that, if, notwithstanding the foregoing, the Merger is not permitted to be effected pursuant to NRS 92A.133 for any reason, then the Parties shall take all actions necessary to cause the authorization of this Agreement and the Merger, and the consummation of the Merger as promptly as practicable after the consummation of the Offer pursuant to the applicable provisions of the NRS.

(b) The consummation of the Merger shall take place at a closing (the "***Closing***") to be held remotely via electronic transmission of related documentation or similar means, on a date and at a time to be agreed upon by Parent and the Company, which date shall be as soon as practicable following the Offer Closing and in any event, no later than the third (3rd) Business Day after the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted by applicable Law) of such conditions at the Closing), or at such other location, date and time as Parent and the Company shall mutually agree upon in writing. The date upon which the Closing shall actually occur pursuant hereto is referred to herein as the "***Closing Date***."

(c) At the Closing, the Company shall file articles of merger in requisite and customary form and substance, and as agreed upon with Parent, with the Office of the Nevada Secretary of State and make all other filings or recordings required by the NRS in connection with the Merger. The Merger shall become effective at such time as the articles of merger is duly filed with the office of the Nevada Secretary of State (or at such later effective time permitted under the NRS as may be mutually agreed to by the parties and as specified in the articles of merger) (the time as of which the Merger becomes effective, the "***Effective Time***").

(d) From and after the Effective Time, the Surviving Corporation shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and Merger Sub, all as provided under the NRS.

Section 2.2 Conversion of Shares of Capital Stock. At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any holder of any shares of Company Common Stock or any shares of capital stock of Merger Sub or Parent:

(a) except as otherwise provided in Section 2.2(b), Section 2.2(c) or Section 2.4, each share of Company Common Stock outstanding immediately prior to the Effective Time shall be cancelled and cease to exist and shall be converted into the right to receive the Offer Price in cash, without interest (such amount, as may be adjusted in accordance with Section 2.8, the "***Common Stock Merger Consideration***"), and each holder of any such share of Company Common Stock shall cease to have any rights with respect thereto, except the right to receive the Common Stock Merger Consideration in accordance with Section 2.3;

(b) each share of Company Common Stock held by the Company as a treasury share, and share of Company Common Stock owned by a wholly-owned Company Subsidiary or by Parent or its Subsidiaries immediately prior to the Effective Time shall be canceled, and no payment shall be made with respect thereto; and

(c) each share of common stock of Merger Sub outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value $0.001 per share, of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

Section 2.3 Surrender and Payment.

(a) Prior to the Acceptance Time, Parent shall appoint an agent reasonably acceptable to the Company (the "***Exchange Agent***") for the purpose of paying the Merger Consideration as provided in Section 2.2(a). Parent shall provide (or shall cause to be provided) to the Exchange Agent, at or prior to the Effective Time, cash sufficient to pay the Merger Consideration in respect of (i) certificated shares of Company Common Stock (the certificates representing such certificated shares, the "***Certificates***") and (ii) the uncertificated shares of Company Common Stock (the "***Uncertificated Shares***") (but not, for the avoidance of doubt, the Company PSU Consideration and the Company RSU Consideration) (such cash, the "***Exchange Fund***"). If, for any reason (including losses) the Exchange Fund is inadequate to pay the Merger Consideration in respect of the Certificates and the Uncertificated Shares (excluding, for the avoidance of doubt, the Company PSU Consideration and the Company RSU Consideration), Parent shall take all steps necessary to enable or cause the Surviving Corporation promptly to deposit in trust additional cash with the Exchange Agent sufficient to pay all such amounts, and Parent and the Surviving Corporation shall in any event be liable for the payment thereof. All cash deposited with the Exchange Agent shall only be used for the purposes provided in this Agreement, or as otherwise agreed by the Company and Parent before the Effective Time. Promptly after the Effective Time (but in no event later than five (5) Business Days after the Effective Time), Parent shall cause the Exchange Agent to send to each holder of shares of Company Common Stock as of immediately prior to the Effective Time (other than Parent or any Subsidiary of Parent) a letter of transmittal, in form and substance reasonably acceptable to the Surviving Corporation, and instructions (which shall specify that the delivery shall be effected, and risk of loss and title shall

pass, only upon proper delivery of the Certificates or transfer of the Uncertificated Shares to the Exchange Agent) for use in such exchange.

(b) Each former holder of shares of Company Common Stock that have been converted into the right to receive the Merger Consideration shall be entitled to receive, upon (i) surrender to the Exchange Agent of a Certificate, together with a properly completed letter of transmittal, or (ii) receipt of an "agent's message" by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, the Merger Consideration in respect of the Company Common Stock represented by a Certificate or Uncertificated Share. Until so surrendered or transferred, as the case may be, each such Certificate or Uncertificated Share shall represent after the Effective Time for all purposes only the right to receive such Merger Consideration. No interest or dividends will be paid or accrue on any Merger Consideration payable to former holders of Certificates or Uncertificated Shares.

(c) If any portion of the Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered Certificate or the transferred Uncertificated Share is registered, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer or such Uncertificated Share shall be properly transferred and (ii) the Person requesting such payment shall pay in advance to the Exchange Agent any transfer or other Taxes required as a result of such payment to a Person other than the registered holder of such Certificate or Uncertificated Share or establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(d) After the Effective Time, the transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of shares of Company Common Stock. If, after the Effective Time, Certificates or Uncertificated Shares are presented to the Surviving Corporation or the Exchange Agent, they shall be canceled and exchanged for the Merger Consideration provided for, and in accordance with the procedures set forth, in this Article II.

(e) Any portion of the Merger Consideration made available to the Exchange Agent pursuant to Section 2.3(a) that remains unclaimed by former holders of shares of Company Common Stock one year after the Effective Time shall be returned to Parent, upon demand, and any such former holder who has not exchanged shares of Company Common Stock for the Merger Consideration in accordance with this Section 2.3 prior to that time shall thereafter look only to Parent for payment of the Merger Consideration in respect of such cancelled shares without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Corporation or the Exchange Agent shall be liable to any former holder of shares of Company Common Stock for any amounts paid to a public official or any Governmental Authority pursuant to applicable abandoned property, escheat or similar Laws. Any amounts remaining unclaimed by former holders of shares of Company Common Stock immediately prior to such time when such amounts would otherwise escheat to or become property of any Governmental Authority shall become, to the extent permitted by applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(f) The agreement with the Exchange Agent shall provide that the Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent or, after the Effective Time, the Surviving Corporation; provided, that (i) no such investment (including any losses thereon) shall relieve Parent or the Exchange Agent from making the payments required by this Article II, (ii) no such investment shall have maturities that could prevent or delay payments to be made pursuant to this Agreement and (iii) all such investments shall be in (w) short-term direct obligations of the United States of America, (x) short-term obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, (y) short-term commercial paper rated the highest quality by either Moody's Investors Service, Inc. or Standard and Poor's Ratings Services or (z) certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding $10 billion. Any interest or income produced by such investments will be payable to the Surviving Corporation or Parent, as directed by Parent.

Section 2.4 No Dissenter's Rights. Pursuant to NRS 92A.390, no holder of any shares of Company Common Stock will have or be entitled to assert dissenter's rights or any other rights of appraisal as a result of or in connection with this Agreement or the Transactions.

Section 2.5 Company Equity Awards.

(a) As of the Effective Time, and conditioned upon the occurrence of the Effective Time, and without any action on the part of any holder of Company Options, (i) all Unvested Company Options (whether time and/or performance-based) that are outstanding as of immediately prior to the Effective Time shall fully vest and become exercisable, and become Vested Company Options and (ii) to the extent not exercised prior to the Effective Time, each Company Option (including any Vested Company Option and any formerly Unvested Company Option) shall be canceled at the Effective Time, without any consideration in respect thereof.

(b) Effective as of the Effective Time and without any action on the part of any holder of Company RSUs, each Company RSU, other than a Company PSU, that is then outstanding and unvested shall automatically be canceled and converted into the right to receive from the Surviving Corporation, through the Surviving Corporation's payroll, an amount of cash equal to the product of (A) the number of shares of Company Common Stock then underlying such Company RSU multiplied by (B) the Common Stock Merger Consideration, without any interest thereon (the "***Company RSU Merger Consideration***").

(c) Effective as of the Effective Time and without any action on the part of any holder of Company PSUs, each Company PSU that is then outstanding and unvested shall automatically be canceled and converted into the right to receive from the Surviving Corporation, through the Surviving Corporation's payroll, an amount of cash equal to the product of (A) the number of shares of Company Common Stock that vest at the target vesting level pursuant to the applicable Company PSU grant terms *multiplied by* (B) the Common Stock Merger Consideration, without any interest thereon (the "***Company PSU Merger Consideration***").

(d) Parent shall pay, or shall cause the Surviving Corporation to pay through the Surviving Corporation's payroll, the aggregate Company RSU Merger Consideration and Company PSU Merger Consideration, without interest thereon and subject to deduction for any

required withholding, at the Effective Time or at the Company's next ordinary course payroll date (but in no event later than twenty (20) Business Days after the Effective Time).

(e) The Company Board (or, if appropriate, any committee thereof administering the Stock Plans) and the Company, as applicable, shall take such actions as are necessary (i) to approve and effectuate the foregoing provisions of this Section 2.5, including making any determinations and/or resolutions of the Company Board or a committee thereof or any administrator of a Stock Plan as may be necessary in accordance with the terms of the applicable Stock Plan and (ii) to terminate each of the Stock Plans, effective as of and subject to the occurrence of the Effective Time.

(f) Promptly following the Agreement Date, the Company Board (or, if applicable, any committee thereof administering the Company ESPP) shall adopt such resolutions or take such other necessary actions to provide that, (i) with respect to any outstanding Offering Period(s) (as such term is defined in the Company ESPP) under the Company ESPP as of the Agreement Date, no participant in the Company ESPP may increase the percentage amount of his or her payroll deduction election in effect on the Agreement Date for such Offering Period and no new participants may participate in such Offering Period; (ii) no new Offering Period shall be commenced under the Company ESPP on or after the Agreement Date; (iii) any Offering Period under the Company ESPP that does not end prior to the Effective Time shall terminate and a Subscription Date (as such term is defined in the Company ESPP) shall occur under the Company ESPP immediately prior to the Effective Time with respect to such Offering Period, in which case any shares of Company Common Stock purchased pursuant to such Offering Period shall be treated the same as all other shares of Company Common Stock in accordance with Section 2.2(a); and (iv) immediately prior to, and subject to the occurrence of the Effective Time, the Company ESPP shall terminate.

Section 2.6 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the delivery by such Person of a written indemnity agreement in form and substance reasonably acceptable to Parent, the Exchange Agent will pay, in exchange for such lost, stolen or destroyed Certificate, the applicable Merger Consideration to be paid in respect of the shares of Company Common Stock formerly represented by such Certificate, as contemplated by this Article II.

Section 2.7 Warrants. Prior to the Effective Time, the Company shall deliver to the holders of any Warrants notice required under the terms of the Warrant Documentation (if any). The Warrants outstanding immediately prior to the Effective Time (other than the Warrants that automatically become null and void as of the Effective Time if not exercised prior thereto, which shall expire in accordance with their terms if unexercised) shall remain outstanding immediately following the Effective Time and shall not be affected by the Merger (except for the effects specifically set forth in the Warrant Documentation). The Surviving Corporation, and to the extent required under the applicable Warrant Documentation, Parent, shall comply with any obligations under the applicable Warrant Documentation.

Section 2.8 Adjustments to Merger Consideration. The Merger Consideration shall be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend

(including any dividend or distribution of securities convertible into Company Common Stock), reorganization, recapitalization, reclassification, combination, merger, issuer tender offer, exchange of shares or other like change with respect to Company Common Stock occurring on or after the Agreement Date and prior to the Effective Time, and such adjustment to the Merger Consideration shall provide to the holders of Company Common Stock and Company Equity Awards the same economic effect as contemplated by this Agreement prior to such action and shall, as so adjusted from and after the date of such event, be the Merger Consideration; provided, however, that nothing in this Section 2.8 shall be construed to permit the Company to take any action with respect to the Company Common Stock that is prohibited by the terms of this Agreement, including Section 6.2.

Section 2.9 Withholding. Notwithstanding anything to the contrary here in, each of Parent, Merger Sub, the Surviving Corporation, its Subsidiaries and any other withholding agent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement, including consideration payable to any holder or former holder of Company Equity Awards, such amounts as it is required to deduct and withhold with respect to the making of such payment pursuant to the Code or under any provision of federal, state, local or foreign Tax Law. To the extent that amounts are so deducted or withheld and timely and properly paid over to the appropriate Governmental Authority, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

## ARTICLE III
## THE SURVIVING CORPORATION

Section 3.1 Articles of Incorporation. At the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated to be in the form set forth on Exhibit B, until thereafter amended in accordance with the NRS and such articles of incorporation.

Section 3.2 Bylaws. At the Effective Time, the bylaws of Merger Sub as in effect immediately prior to the Effective Time shall be amended and restated to be in the form of the bylaws of the Surviving Corporation (except that all references to the name of Merger Sub therein shall be modified to refer to the name of the Company), until thereafter amended in accordance with the NRS and such bylaws.

Section 3.3 Directors and Officers.

(a) The directors of the Surviving Corporation shall from and after the Effective Time until their respective successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation be the individuals who are the directors of Merger Sub immediately prior to the Effective Time.

(b) The officers of the Surviving Corporation shall from and after the Effective Time until their respective successors have been duly appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the

Surviving Corporation be the individuals who are the officers of Merger Sub immediately prior to the Effective Time.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as (i) disclosed in the Company SEC Reports that are publicly available on the internet website of the SEC prior to the Agreement Date (excluding in each case any disclosures contained therein (other than those disclosures which relate to specific historical events or circumstances affecting the Company) under the captions "Risk Factors," "Safe Harbor Cautionary Statement," "Quantitative or Qualitative Disclosures About Market Risk" and any other disclosures contained therein to the extent they are predictive, cautionary or forward-looking in nature) (provided, that the exception in this clause (i) shall not apply to Section 4.2 or Section 4.6(c) or (ii) set forth in the disclosure letter (each section of which qualifies the correspondingly numbered representation and warranty or covenant to the extent specified therein, provided that any disclosure set forth with respect to any particular Section shall be deemed to be disclosed in reference to any other applicable Section if the disclosure in respect of the particular Section is sufficient on its face to inform Parent of the applicability of such disclosure to such other Section, provided, further that with respect to Section 4.6(c), only the items (if any) specifically disclosed against Section 4.6(c) of the Company Disclosure Letter shall be deemed disclosure with respect to Section 4.6(c)) delivered by the Company to Parent prior to the execution of this Agreement (the "***Company Disclosure Letter***"), the Company hereby represents and warrants to Merger Sub and Parent as follows:

Section 4.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of Nevada. Each of the Subsidiaries of the Company (the "***Company Subsidiaries***") (i) is a corporation, limited liability company, limited partnership or other legal entity duly organized, validly existing and (ii) where applicable, in good standing under the Laws of the jurisdiction of its organization (to the extent the "good standing" concept is applicable in the case of any jurisdiction outside the United States), except where the failure to be in good standing (to the extent applicable) would not reasonably be expected to have a Company Material Adverse Effect. Each of the Company and the Company Subsidiaries has all requisite corporate or similar power and authority to enable it to own, operate and lease its properties, own and use its assets and to carry on its business as now conducted, except for such power and authority, the lack of which, individually or in the aggregate, has not had or would not reasonably be expected to have a Company Material Adverse Effect. The copies of the articles of incorporation and bylaws of the Company which are incorporated by reference as exhibits to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2020 (the "***Company Charter Documents***") are complete and correct copies of such documents and contain all amendments thereto as in effect on the Agreement Date. There are no provisions of the Company Charter Documents, and the Company has not taken or permitted to occur any action that would have the effect of limiting or precluding, in each case, as contemplated by this Agreement, the (i) ability of the Company to consummate the Merger under NRS 92A.133 (and not a vote of the Company's stockholders pursuant to NRS 92A.120) by virtue of satisfaction of the ownership threshold requirements of NRS 92A.133 pursuant to the Offer, or (ii) exemption, pursuant to NRS 92A.390, of the Merger from dissenter's rights under NRS 92A.300 to 92A.500, inclusive.

Section 4.2 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 12,000,000 shares of Company Common Stock and (ii) 10,000,000 shares of preferred stock, par value $0.001 per share, of the Company (the "***Company Preferred Stock***"). As of the close of business on May 18, 2022 **(**the "***Capitalization Date***"): (A) 8,810,224 shares of Company Common Stock were issued and outstanding; (B) no shares of Company Common Stock were held by the Company in its treasury; (C) there were outstanding Company Options to purchase 261,605 shares of Company Common Stock; (D) 167,487 shares of Company Common Stock were issuable in respect of outstanding Company PSUs (assuming target achievement, respectively, of any applicable performance goals); (E) 318,511 shares of Company Common Stock were issuable in respect of outstanding Company RSUs; (F) 177,604 shares of Company Common Stock were reserved for the future grant of Company Equity Awards under the Stock Plans (excluding shares reserved for issuance upon exercise of the Company Options); (G) 101,239 shares of Company Common Stock were reserved for future issuance under the Company ESPP; (H) 101,044 shares of Company Common Stock were issuable upon the exercise of Warrants and (I) no shares of Company Preferred Stock. Such issued and outstanding shares of Company Common Stock have been, and all shares that may be issued pursuant to any Stock Plan, the Company ESPP, the Warrants, or as contemplated or permitted by this Agreement will be when issued in accordance with the respective terms thereof, duly authorized, validly issued, fully paid, nonassessable and not subject to (or issued in violation of) any preemptive or similar rights. There are no outstanding contractual obligations of the Company of any kind to redeem, purchase or otherwise acquire any Equity Interests of the Company. Other than the Company Common Stock, there are no outstanding bonds, debentures, notes or other Indebtedness or securities of the Company having the right to vote (or, other than the outstanding Company RSUs and Warrants, convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote. Neither the Company nor any Company Subsidiary is a party to any voting agreement with respect to any Equity Interests of the Company or any Company Subsidiary. Section 4.2(a) of the Company Disclosure Letter sets forth, as of the Capitalization Date, a list of the holders of Company Equity Awards, including (to the extent applicable) the date on which each such Company Equity Award was granted, the number of shares of Company Common Stock subject to such Company Equity Award, the expiration date of such Company Equity Award, the price at which such Company Equity Award may be exercised (if any) under an applicable Stock Plan, the vested or unvested status of such Company Equity Award, and the applicable Stock Plan pursuant to which such Company Equity Awards were granted. Section 4.2(a) of the Company Disclosure Letter sets forth a true and correct list of the weighted average exercise price of the Warrants.

(b) Except as set forth in Section 4.2(b) and in Section 4.2(b) of the Company Disclosure Letter, and other than pursuant to the terms of the Warrants, as of the Capitalization Date, no (i) shares of capital stock or other voting securities of, (ii) other equity or voting interests in, (iii) securities convertible into or exchangeable for, or options, warrants or other rights to acquire or receive any, capital stock, voting securities or other equity interests in or (iv) stock appreciation rights, "phantom" stock rights or other rights that give the holder thereof any economic or voting interest of a nature accruing to the holders of capital stock in (clauses (i), (ii), (iii) and (iv), collectively, "***Equity Interests***") the Company were issued, reserved for issuance or outstanding. Except as set forth in Section 4.2(a) of the Company Disclosure Letter or pursuant

to the terms of the Warrants, as of the Capitalization Date, there are no outstanding commitments, agreements, arrangements or undertakings of any kind to which the Company or any of the Company Subsidiaries is a party or by which any of them is bound (A) obligating the Company or any of the Company Subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, any Equity Interests in the Company or any of the Company Subsidiaries or (B) obligating the Company or any of the Company Subsidiaries to issue, grant, extend or enter into any such commitment, agreement, arrangement or undertaking.

Section 4.3 Authorization; No Conflict.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Offer, the Merger and the other Transactions are within the Company's corporate powers and, assuming that the Transactions are consummated in accordance with NRS 92A. 133 and have been duly authorized by all necessary corporate action on the part of the Company. The Company has duly executed and delivered this Agreement and, assuming due authorization, execution and delivery by Parent and Merger Sub, this Agreement constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms (except as enforceability is subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

(b) The Company Board, by resolutions adopted at a meeting duly called and held, has unanimously (i) determined that this Agreement and the Transactions, including the Offer and the Merger, are fair to and in the best interests of the Company and its stockholders, (ii) adopted, approved and declared advisable this Agreement and the Transactions, and (iii) duly adopted resolutions recommending, subject to Section 6.3, that the holders of Company Common Stock accept the Offer and tender their Shares to Merger Sub pursuant to the Offer (such recommendation, the "***Company Board Recommendation***"), which resolutions, subject to Section 6.3, have not been rescinded, modified or withdrawn in any way.

(c) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Transactions require no action by or in respect of or filing with any Governmental Authority, other than (i) the filing of the articles of merger with respect to the Merger with the Office of the Nevada Secretary of State and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) compliance with any applicable requirements of the Securities Act and the Exchange Act, (iv) compliance with any applicable rules of Nasdaq, and (v) any additional actions or filings, except those that the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(d) The execution, delivery and performance by the Company of this Agreement and the consummation of the Transactions do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the Company Charter Documents, (ii) assuming compliance with the matters referred to in Section 4.3(c), contravene, conflict with or result in a violation or breach of any provision of any applicable Law or Order, (iii) assuming compliance with the matters referred to in Section 4.3(c), require any consent or other action by any Person under, result in any breach of, constitute a default, or an event that, with or without

notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or the loss of any benefit to which the Company or any of the Company Subsidiaries is entitled under, any Contract, or result in the creation or imposition of any Lien on any asset of the Company or any of the Company Subsidiaries, with only such exceptions, in the case of each of clauses (iii) through (iv), as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.4 Subsidiaries.

(a) Section 4.4 of the Company Disclosure Letter sets forth, as of the Agreement Date, a complete and accurate list and the Equity Interest of each Person that is owned, directly or indirectly, by the Company and their respective jurisdictions of organization. The Company owns, directly or indirectly, 100% of the Equity Interests of the Company Subsidiaries. Other than equity securities held in the ordinary course of business for cash management purposes, the Company does not own or hold the right to acquire any equity securities, ownership interests or voting interests (including voting debt) of, or securities exchangeable or exercisable therefor, or investments in, any other Person.

(b) All of the outstanding Equity Interests in each Company Subsidiary are, where applicable, duly authorized, validly issued, fully paid, nonassessable and not subject to (or issued in violation of) any preemptive or similar rights, and such Equity Interests are owned by the Company or by a Company Subsidiary free and clear of any Liens (other than Permitted Liens) or limitations on voting rights. There are no subscriptions, options, warrants, calls, rights, convertible securities or other agreements or commitments of any character relating to the issuance, transfer, sales, delivery, voting or redemption (including any rights of conversion or exchange under any outstanding security or other instrument) for any of the Equity Interests of any Company Subsidiary.

(c) The Company has not agreed and is not obligated to make, and is not bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity.

(d) The Company has delivered or made available to Parent accurate and complete copies of the articles or certificate of incorporation and bylaws (or equivalent organizational documents, as applicable) of the Company Subsidiaries, in each case as in effect on the date hereof. None of the Company Subsidiaries are in material violation of any of the provisions of their articles or certificate of incorporation and bylaws (or equivalent organizational documents, as applicable).

Section 4.5 SEC Reports and Financial Statements.

(a) Since January 1, 2019, the Company has timely filed or furnished with the United States Securities and Exchange Commission (the "***SEC***") all reports, schedules, forms, registration statements, definitive proxy statements and other documents (including exhibits and all information incorporated by reference) required to be filed or furnished by the Company with the SEC (such documents, together with any documents filed or furnished, as applicable, by the Company with the SEC during such period on a voluntary basis, the "***Company SEC Reports***").

As of their respective filing dates, and giving effect to any amendments or supplements thereto filed prior to the Agreement Date, the Company SEC Reports (i) complied in all material respects as to form with the requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act and (ii) did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the Company Subsidiaries is required to file any forms, reports or other documents with the SEC pursuant to Section 13 or 15 of the Exchange Act.

(b) The consolidated balance sheets and the related consolidated statements of comprehensive income, changes in stockholders' equity and cash flows (including, in each case, any related notes and schedules thereto) of the Company contained in the Company SEC Reports, as of their respective dates of filing with the SEC (or, if such Company SEC Reports were amended prior to the Agreement Date, the date of the filing of such amendment, with respect to the consolidated financial statements that are amended or restated therein), comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in conformity with GAAP (except, in the case of unaudited statements, subject to normal and recurring year-end adjustments) applied on a consistent basis during the periods involved (except as otherwise noted therein or to the extent required by GAAP) and present fairly in all material respects the consolidated financial position and the consolidated results of operations, cash flows and stockholders' equity of the Company and the Company Subsidiaries as of the dates or for the periods presented therein (subject, in the case of unaudited statements, to normal year-end adjustments), except to the extent that information contained in such Company SEC Report has been reviewed, amended, modified or supplemented (prior to the date of the Agreement) by a subsequent Company SEC Report.

(c) Neither the Company nor any of the Company Subsidiaries has any liabilities required by GAAP to be set forth on a consolidated balance sheet of the Company, except: (i) liabilities reflected or reserved against in the consolidated balance sheet (or the notes thereto) of the Company as of December 31, 2021 included in the Company SEC Reports (the "***Balance Sheet***"), (ii) liabilities incurred after December 31, 2021 in the ordinary course of business (none of which relate to breach of Contract, breach of warranty, tort, infringement or violation of applicable Law), (iii) liabilities incurred in connection with the Transactions or the vitaCare Transaction, (iv) executory obligations under any Contract (none of which is a liability for a breach thereof); provided that, with respect to Company Material Contracts in effect on the Agreement Date, such Contract was made available to Parent prior to the Agreement Date and, with respect to Contracts entered into subsequent to the Agreement Date, such Contract was entered into in accordance with Section 6.2, or (v) liabilities that would not reasonably be expected to be, individually or in the aggregate, material to the Company and the Company Subsidiaries, taken as a whole.

(d) The Company maintains a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and include those policies and procedures that pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the Company and provide reasonable assurance: (i) that transactions are recorded as necessary to permit preparation of financial

statements in conformity with GAAP, (ii) that receipts and expenditures are executed only in accordance with the authorization of management and directors of the Company and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of the Company's assets that would materially affect the Company's financial statements. As of the Agreement Date, neither the Company nor the Company's independent registered public accounting firm has identified or been made aware of any "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over financial reporting, in each case that has not been subsequently remediated.

(e) The Company maintains "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that (i) all information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported to the individuals responsible for preparing such reports within the time periods specified in the rules and forms of the SEC, and (ii) all such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and to make the certifications of the principal executive officer and principal financial officer of the Company required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act.

(f) The Schedule 14D-9 will, when filed with the SEC, and any amendments or supplements thereto, when filed with the SEC, at any time such document is amended or supplemented or at the time such document is first published, sent or given to the Company's stockholders, as applicable, comply in all material respects with the applicable requirements of the Exchange Act. None of the information supplied or to be supplied by or on behalf of the Company expressly for inclusion or incorporation by reference in the Schedule TO and the other Offer Documents, or the Schedule 14D-9, at the time such document is filed with the SEC, at any time such document is amended or supplemented or at the time such document is first published, sent or given to the Company's stockholders, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The representations and warranties contained in this Section 4.5(f) shall not apply to statements or omissions included or incorporated by reference in the Schedule TO, the Schedule 14D-9 or other Offer Documents, as applicable, based upon information supplied by the Parent, Merger Sub, or any Subsidiary of Parent or any of their respective Representatives specifically for use or incorporation by reference therein.

(g) Neither the Company nor any of the Company Subsidiaries is a party to or has any obligation or other commitment to become a party to any securitization transaction, off-balance sheet partnership or any similar Contract (including any Contract relating to any transaction or relationship between or among the Company or any of the Company Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose Entity, on the other hand, or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)) where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or

material liabilities of, the Company or any of the Company's Subsidiaries in the Company's published financial statements or other Company SEC Reports.

(h) As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Company SEC Reports. To the Knowledge of the Company, none of the Company SEC Reports is the subject of ongoing SEC review and there are no inquiries or investigations by the SEC or any internal investigations pending or threatened, in each case regarding any accounting practices of the Company.

(i) The Company is in compliance in all material respects with the applicable listing rules and policies of Nasdaq.

Section 4.6 Absence of Material Adverse Changes, etc. Between December 31, 2021 and the Agreement Date, (a) except for actions expressly contemplated by this Agreement, the vitaCare Transaction Documents or the vitaCare Transaction, the Company and the Company Subsidiaries have conducted their business in all material respects in the ordinary course of business, (b) the Company and the Company Subsidiaries have not taken any actions that, if taken after the Agreement Date, would require Parent's consent pursuant to Section 5.2(b), and (c) there has not been or occurred any event, condition, change, occurrence or development that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

Section 4.7 Litigation. There are, and since January 1, 2019, there have been, no Legal Proceedings pending or, to the Knowledge of the Company, threatened, to which the Company or any of the Company Subsidiaries is a party, or, to the Knowledge of the Company, by, against or affecting any present officer, director or employee of the Company or any Company Subsidiary in such individual's capacity as such that, individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect. There are no Orders outstanding against the Company or any of the Company Subsidiaries that, individually or in the aggregate, have had or would reasonably be expected to have a Company Material Adverse Effect. To the Knowledge of the Company no investigation or review by any Governmental Authority with respect to the Company or any Company Subsidiary is pending or is being threatened, other than any investigations or reviews that would not reasonably be expected to have a Company Material Adverse Effect.

Section 4.8 Broker's or Finder's Fees. Except for Greenhill & Co., LLC or any of its respective Affiliates (each a "***Company Financial Advisor***" and collectively, the "***Company Financial Advisors***"), no agent, broker, Person or firm acting on behalf of the Company or any Company Subsidiary or under the Company's or any Company Subsidiary's authority is or will be entitled to any advisory or broker's or finder's or other similar fee or commission from any of the parties hereto in connection with any of the Transactions. The Company has made available to Parent accurate and complete copies of any agreements with the Company Financial Advisors.

Section 4.9 Employee Plans.

(a) Section 4.9(a) of the Company Disclosure Letter sets forth a complete and accurate list of each material Company Plan (other than any offer letter or other employment

Contract that (i) is terminable "at-will" or following a notice period imposed by applicable Law, (ii) does not provide for severance, equity or equity-based compensation or retention, change of control, transaction or similar bonuses other than severance payments required to be made by the Company or any Company Subsidiaries under applicable foreign Law, and (iii) does not materially deviate from the Company's standard form made available to Parent prior to the Agreement Date).

(b) With respect to each material Company Plan (excluding for this purpose offer letters that do not materially deviate from the Company's standard form made available to Parent prior to the Agreement Date), the Company has made available to Parent a true and correct copy of, as applicable: (i) each written Company Plan and all amendments thereto, if any, or, with respect to any unwritten Company Plan, a summary of the material terms thereof; (ii) the current summary plan description of each Company Plan and any material modifications thereto, if any, or any written summary provided to participants with respect to any plan for which no summary plan description exists; (iii) the most recent determination letter (or if applicable, advisory or opinion letter) from the Internal Revenue Service or other Governmental Authority; (iv) the most recent annual report on Form 5500 or such similar report, statement or information return required to be filed with or delivered to any Governmental Authority, if any; (v) all material non-routine communications with any Governmental Authority regarding any Company Plan; (vi) the most recent nondiscrimination tests required to be performed under the Code; and (vii) the most recent financial statements and actuarial or other valuation reports prepared with respect thereto.

(c) Neither the Company nor any other Person that would be or, at any relevant time, would have been considered a single employer with the Company under the Code or ERISA has during the past six (6) years maintained, contributed to, or been required to contribute to and neither the Company nor any Company Subsidiary has any current or contingent liability or obligation under or with respect to (i) a plan subject to Title IV of ERISA or Code Section 412, including any "single employer" defined benefit plan or any "multiemployer plan" each as defined in Section 4001 of ERISA, (ii) a "multiple employer plan" as defined in Section 413(c) of the Code, or (iii) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(d) Each Company Plan that is intended to be "qualified" within the meaning of Section 401(a) of the Code or receive any other favorable tax treatment, is so qualified and is the subject of a favorable determination letter (or, if applicable, advisory or opinion letter) from the Internal Revenue Service that has not been revoked or meets the requirements for such treatment and, to the Knowledge of the Company, no event has occurred and no facts or conditions exist that would reasonably be expected to adversely affect the qualified status of any such Company Plan or result in the imposition of any liability, penalty or Tax under ERISA, the Code or other applicable Law. Except as would not reasonably be expected to result in material liability to the Company or any Company Subsidiary, no "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, or breach of fiduciary duty has occurred with respect to any Company Plan. Neither the Company nor any Company Subsidiary has any liability (whether or not assessed) under Sections 4980D, 4980H, 6721 or 6722 of the Code.

(e) Except to the extent required under Section 601 et seq. of ERISA or 4980B of the Code (or any other similar state or local Law) for which the covered Person bears the full

cost of coverage, neither the Company or any Company Subsidiary nor any Company Plan has any present or future obligation to provide post-employment or post-termination welfare benefits to or make any payment to, or with respect to, any Person including any former employee, officer or director or contractor of the Company or any Company Subsidiary pursuant to any retiree medical benefit plan or other retiree welfare plan or Company Plan.

(f) Except as has not had and would not reasonably be expected to have a Company Material Adverse Effect, (i) each Company Plan has been established, maintained, funded, operated and administered in accordance with its provisions and in material compliance with all applicable provisions of ERISA, the Code and other applicable Law; (ii) all payments and contributions required to be made under the terms of any Company Plan have been made or the amount of such payment or contribution obligation has been reflected in the Company SEC Reports which are publicly available prior to the Agreement Date; and (iii) no disputed claims for benefits or Legal Proceeding is pending or, to the Knowledge of the Company, threatened in connection with any Company Plan, other than routine claims for benefits that have been or are being handled through an administrative claims procedure.

(g) Neither the Company nor any Company Subsidiary maintains any obligations to indemnify, "gross-up" or reimburse any individual in respect of any Taxes or related interest or penalties incurred by such individual, including under Sections 409A or 4999 of the Code or otherwise.

(h) Each Company Plan subject to Section 409A of the Code (if any) has been operated and maintained in compliance in all material respects therewith, such that no Taxes or interest will be due and owing in respect of such Company Plan failing to be in compliance therewith.

(i) Except as set forth in Section 4.9(i) of the Company Disclosure Letter, neither the execution of this Agreement nor the consummation of the Transactions (alone or in conjunction with any other event, including any termination of employment on or following the Effective Time) will (i) entitle any current or former director, officer, employee or individual independent contractor of the Company or any of the Company Subsidiaries to any compensation or benefit, (ii) accelerate the time of payment or vesting, or trigger any payment or funding, of any compensation or benefits or trigger any other material obligation under any Company Plan or otherwise, (iii) result in any breach or violation of, default under or limit the Company's right to amend, modify or terminate any Company Plan or (iv) give rise to payments or benefits that, separately or in the aggregate, could be nondeductible to the payor under Section 280G of the Code or would result in an excise Tax on any recipient under Section 4999 of the Code.

Section 4.10 Opinions of Company Financial Advisors. The Company Board has received from the Company Financial Advisor an opinion to the effect that, based on various assumptions and limitations set forth therein, as of the date of such opinion, the Merger Consideration to be received by the holders of Company Common Stock (other than Parent and its Affiliates) pursuant to this Agreement is fair, from a financial point of view, to such holders.

Section 4.11 Taxes.

(a) The Company and each of the Company Subsidiaries has (i) timely filed all income and other material Tax Returns required to be filed by it in the manner prescribed by applicable Law and all such Tax Returns are true, correct and complete in all material respects; (ii) paid all Taxes required to be paid by the Company or any Company Subsidiary (whether or not shown as due and owing on such Tax Return); and (iii) withheld and timely paid over to the appropriate Governmental Authority all material Taxes required to have been withheld and paid by such Person.

(b) There is no claim, audit, action, suit or proceeding currently pending or, to the Knowledge of the Company, threatened against or with respect to the Company or any Company Subsidiary in respect of any Taxes or Tax Return. No deficiency for any Taxes has been asserted in writing or assessed by any Governmental Authority against any the Company or any Company Subsidiary, except for deficiencies that have been satisfied by payment, settled, withdrawn or otherwise resolved. No claim has been made by any Governmental Authority in a jurisdiction in which the Company or any Company Subsidiary, as applicable, does not file Tax Returns that it is or may be subject to Tax by, or required to file Tax Returns in, that jurisdiction. Neither the Company nor any Company Subsidiary has granted any request, agreement or consent to waive or extend any statute of limitations relating to the payment or collection of Taxes of the Company or the Company Subsidiaries that has not expired and no request for any such waiver or extension is currently pending.

(c) Neither the Company nor any Company Subsidiary has been a party to a "listed transaction" or "transaction of interest" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) and (6) (or similar provisions of state, local, or foreign Law).

(d) Neither the Company nor any Company Subsidiary is a party to (i) any Tax sharing agreement, Tax indemnity obligation or similar agreement, or (ii) any other arrangement or practice with respect to Taxes. Neither the Company nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined, unitary or similar group filing income Tax Returns (other than a group the common parent of which was the Company) or (ii) has any liability for the Taxes of another Person (other than the Company or any Company Subsidiary) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by Contract (other than Contracts entered into in the ordinary course of business the principal purpose of which is unrelated to Taxes) or otherwise.

(e) There are no Liens for Taxes on any of the assets of the Company or any Company Subsidiary other than Permitted Liens.

(f) Neither the Company nor any of the Company Subsidiaries will be required to include any item of material income in, or exclude any item of material deduction from, taxable income for any period (or portion thereof) ending after the Closing Date as a result of: (i) change in, or use of an improper, method of accounting for a taxable period ending on or prior to the Closing Date, including by reason of the application of Section 481 of the Code (or any analogous or similar provision of state, local or foreign Law); (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or foreign Law)

executed on or prior to the Closing Date; (iii) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 (or any corresponding or similar provision of state, local, or foreign income Law); (iv) an installment sale or open transaction disposition made on or prior to the Closing Date; or (v) a prepaid amount or deferred revenue received on or prior to the Closing Date. Neither the Company nor any of the Company Subsidiaries will be required to make any payment after the Closing Date as a result of an election under Section 965 of the Code.

(g) Within the past two (2) years, neither the Company nor any of the Company Subsidiaries has been either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(h) The Company has not been, and will not be, a United States real property holding company within the meaning of Section 897(c) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(i) Neither the Company nor any of the Company Subsidiaries has deferred any Taxes under Section 2302 of the CARES Act, claimed any Tax credit under Section 2301 of the CARES Act or otherwise taken any action to elect or avail itself of any provision of the CARES Act relating to Taxes.

Section 4.12 Compliance with Laws; Permits; Governmental Authorizations.

(a) Neither the Company nor any of the Company Subsidiaries is, or since January 1, 2019 has been, in violation of any Law (including Health Law) or Order applicable to the Company or the Company Subsidiaries or by which any of their respective properties or businesses are bound or any regulation issued under any of the foregoing or has been notified by any Governmental Authority of any violation by the Company or any Company Subsidiary of, or any investigation with respect to, any such Law (including Health Law) or Order, except for any such violation that would not, or would not reasonably be expected to individually or in the aggregate, have a Company Material Adverse Effect.

(b) Since January 1, 2019, neither the Company, any Company Subsidiary, nor any director, officer or employee of the Company or any Company Subsidiary nor, to the Knowledge of the Company, any representative, agent, consultant, or any other person (in each case, acting for or on behalf of the Company or Company Subsidiary) has violated any provision of any Anti-Corruption Laws, Health Laws or Trade Control Laws by having: (i) directly or indirectly paid, offered or promised to make or offer any contribution, gift, entertainment or other expense, (ii) made, offered or promised to make or offer any payment, loan or transfer of anything of value, including any reward, advantage or benefit of any kind to or for the benefit of foreign or domestic government officials or employees, or to foreign or domestic political parties, candidates thereof or campaigns, (iii) paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, rebate, or other similar payment of any nature, (iv) established or maintained any fund of corporate monies or other properties, (v) created or caused the creation of any false or inaccurate books and records of the Company or any Company Subsidiaries related to any of the foregoing, (vi) taken, caused to be taken or failed to have taken any other action in connection with the business of the Company that would cause the Company to violate any Anti-Corruption Laws

or Trade Control Laws, (vii) been a Sanctioned Person or (viii) engaged in any dealings with, for the benefit of, or on behalf of any Sanctioned Person or Sanctioned Country; except, in each case, as would not reasonably be expected to have a Company Material Adverse Effect. The Company has established and maintains policies and procedures designed to reasonably ensure compliance with Anti-Corruption Laws, Trade Control Laws and Health Laws.

(c) Each of the Company and the Company Subsidiaries is, and has been since January 1, 2019, in possession of all governmental franchises, licenses, permits, Regulatory Permits, authorizations and approvals ("***Permits***") necessary to enable it to own, operate and lease its properties and to carry on its business as now conducted, except for such Permits, the lack of which, individually or in the aggregate, has not had or would not reasonably be expected to have a Company Material Adverse Effect.

(d) The Company and the Company Subsidiaries each hold all Governmental Authorizations and Permits necessary to enable the Company and each Company Subsidiary to conduct its business in the manner in which its businesses is currently being conducted, except where failure to hold such Governmental Authorizations would not reasonably be expected to have a Company Material Adverse Effect. The Governmental Authorizations and Permits held by the Company and the Company Subsidiaries are valid and in full force and effect, except where the failure to be valid or in full force and effect would not reasonably be expected to have a Company Material Adverse Effect, individually or in the aggregate. The Company and each of the Company Subsidiaries is in compliance with the terms and requirements of such Governmental Authorizations, except where failure to be in compliance would not reasonably be expected to be material to have a Company Material Adverse Effect.

Section 4.13 Regulatory Matters.

(a) Except as would not reasonably be expected to have a Company Material Adverse Effect, since January 1, 2019, (i) the Company and the Company Subsidiaries have in effect all necessary and applicable Regulatory Permits (including, for the avoidance of doubt, all Investigational New Drug Applications (INDs), New Drug Applications (NDAs) and Biologics License Applications (BLAs) (or their foreign equivalents)) required by any Health Authority to permit the conduct of their respective businesses as currently conducted, (ii) all of such Regulatory Permits are in full force and effect and (iii) each of the Company and applicable Company Subsidiary is in compliance with, and is not in default under, each such Regulatory Permit.

(b) Except as would not reasonably be expected to have a Company Material Adverse Effect, since January 1, 2019, the Company, the Company Products, and the facilities in which the Company Products are developed, tested, made, processed, labeled, packaged, handled or stored are in compliance with all applicable requirements under applicable Health Laws, including cGMP, the Food Drug and Cosmetic Act, the Public Health Service Act, applicable state and local requirements, any comparable foreign Laws, and all terms and conditions of all applicable Regulatory Permits.

(c) Set forth on Section 4.13(c) of the Company Disclosure Letter is a list and description of all Regulatory Permits. Other than the Regulatory Permits in Section 4.13(c) of the Company Disclosure Letter and except as set forth in Section 4.13(c) of the Company Disclosure

Letter, there are no additional Regulatory Permits required by any Health Authority to permit the conduct of their respective businesses as currently conducted, except where the failure to have such Regulatory Permits would not reasonably be expected to have a Company Material Adverse Effect, individually or in the aggregate.

(d) Except as would not reasonably be expected to have a Company Material Adverse Effect, since January 1, 2019, none of the Company, any of the Company Subsidiaries or, to the Knowledge of the Company, any of their respective directors, officers, employees or agents has (i) made an untrue statement of a material fact or fraudulent statement to the FDA or any other Health Authority or (ii) failed to disclose a material fact required to be disclosed to the FDA or any other Health Authority. None of the Company, any of the Company Subsidiaries or any of their respective directors, officers, employees or agents is the subject of any pending or, to the Company's Knowledge, threatened investigation by the FDA, or the subject of any investigation by any other Health Authority or Governmental Authority, that, assuming such investigations were determined or resolved adversely, would be expected to have a Company Material Adverse Effect.

(e) Except as would not reasonably be expected to have a Company Material Adverse Effect, the Company and each of the Company Subsidiaries, is and has been since January 1, 2018, in compliance in all material respects with all Health Laws. Neither the Company, nor any of the Company Subsidiaries (i) has received any material written notice from any Health Authority or Governmental Authority (including a warning, untitled or notice of violation letter or Form FDA-483) alleging any violation of, or non-compliance with, any Health Law, (ii) are subject to any material enforcement, regulatory or administrative proceedings against or affecting the Company or any Company Subsidiary relating to or arising under any Health Law and, to the Knowledge of the Company, no such enforcement, regulatory or administrative proceeding has been threatened, or (iii) are a party to any corporate integrity agreement, monitoring agreement, deferred prosecution agreement, consent decree, settlement order, or other similar agreement, in each case, entered into with or imposed by any Governmental Authority, and no such action is pending as of the date hereof.

(f) Since January 1, 2019, neither any the Company, Company Subsidiaries, nor any of their officers, directors, managers, employees, or agents are or have been: (i) excluded, suspended or debarred from participation, or are otherwise determined to be or identified as ineligible to participate, in any Governmental Health Care Program, (ii) subject to a civil monetary penalty assessed under Section 1128A of the Social Security Act, sanctioned, indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Governmental Health Program requirement or Law, (iii) to the Knowledge of the Company, the target or subject of any investigation relating to any offense of any Governmental Health Care Program, (iv) party to any individual integrity agreement, corporate integrity agreement or other formal or informal agreement (e.g., deferred prosecution agreement) with any Governmental Authority concerning any Health Law, (v) listed on the Office of Inspector General's List of Excluded Individuals and Entities, (vi) listed on the General Services Administrative published list of parties excluded from federal procurement programs and non-procurement programs, or (vii) subjected to any other debarment, exclusion or sanction list or database.

(g) All manufacturing operations conducted by or for the benefit of the Company and the Company Subsidiaries have been conducted in compliance in all material respects with all applicable Health Laws, including good manufacturing practices regulations. No Company Product has been recalled, withdrawn or suspended (whether voluntarily or otherwise) or has been adulterated or misbranded by the Company or a Company Subsidiary in a manner that would reasonably be expected to result in action by a Governmental Authority. No proceedings seeking the recall, withdrawal, suspension or seizure of any such Company Product or pre-market approvals or marketing authorizations are pending or, to the Knowledge of the Company, threatened against the Company, nor have any such proceedings been pending at any time. The Company has made available to Parent all information about adverse drug experiences obtained or otherwise received by the Company from any source, in the United States or outside of the United States, including information derived from clinical investigations, surveillance studies or registries, reports in the scientific literature and unpublished scientific papers relating to any Company Product in the possession of the Company (or to which it has reasonable access).

(h) Neither the Company nor the Company Subsidiaries are covered entities pursuant to HIPAA.

Section 4.14 Intellectual Property; IT Assets; Data Privacy.

(a) Section 4.14(a) of the Company Disclosure Letter sets forth, as of the date of this Agreement, a complete and accurate list of (i) all Company Intellectual Property that is Registered Intellectual Property that has not otherwise lapsed, been abandoned, expired or been cancelled ("***Company Registered Intellectual Property***"), and (ii) a high level, non-confidential description of any invention disclosures and draft patent applications included in the Company Intellectual Property, indicating for each such item in clause (i), as applicable, the owner, the application, publication or registration number, and date and jurisdiction of filing or issuance, as applicable. All necessary registration, maintenance, renewal, and other relevant filing fees due through the date of this Agreement have been timely paid and all necessary documents and certificates in connection therewith have been timely filed with the relevant Governmental Authority or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining the Company Registered Intellectual Property in full force and effect.

(b) The Company is the sole and exclusive owner (including owner of record) of all right, title and interest in and to each item of Company Intellectual Property, except the Company Intellectual Property exclusively licensed to the Company.

(c) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, each item of Company Registered Intellectual Property (other than applications for Company Registered Intellectual Property) is subsisting and, with respect to Company Registered Intellectual Property issued by an applicable Governmental Authority, to the Company's Knowledge, valid and enforceable (assuming registration where required for enforcement). To the Company's Knowledge and except as noted in Section 4.14(a)(i) and Section 4.14(a)(ii) of the Company Disclosure Letter, the Company, and Company Subsidiaries exclusively own the Company Intellectual Property, free and clear of all Liens other than Permitted Liens.

(d) Except as noted in Section 4.14(a) of the Company Disclosure Letter, neither the Company nor any Company Subsidiary has granted to any Person a joint ownership interest of, or has granted, or permitted any Person to retain, any exclusive rights that remain in effect in, any Company Intellectual Property material to the conduct of the businesses of the Company and the Company Subsidiaries. To the Company's Knowledge, the Company Intellectual Property and Licensed Intellectual Property include all Intellectual Property Rights that are necessary and sufficient to enable the operation and conduct of the businesses of the Company and the Company Subsidiaries as currently being conducted or as contemplated to be conducted.

(e) To the Company's Knowledge and except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, since January 1, 2019, the conduct of the businesses of the Company and the Company Subsidiaries and the Company Products have not infringed, violated, or misappropriated the Intellectual Property Rights of any third party and do not infringe, violate or misappropriate the Intellectual Property Rights of any third party. No Legal Proceeding has been filed or threatened in writing against the Company or any Company Subsidiary by any third party since January 1, 2019 (i) alleging that the conduct of the businesses of the Company or the Company Subsidiaries infringes, violates or misappropriates the Intellectual Property Rights of any third party or (ii) challenging or contesting the ownership, validity, scope, registrability, enforceability or use of any Company Intellectual Property other than office actions in the ordinary course of prosecution.

(f) To the Company's Knowledge, except as would not have a Company Material Adverse Effect, no Person has been or is misappropriating, infringing, diluting or violating any Company Intellectual Property. No such claims have been made in writing (including cease and desist letters or offers to take a license) against any Person by the Company or any Company Subsidiary.

(g) To the Knowledge of the Company, no current or former director, officer, employee, contractor or consultant of the Company or the Company Subsidiaries jointly owns or retains any license or similar right under any material Company Intellectual Property. To the Company's Knowledge, all Persons who contributed to the creation or development of any material Company Intellectual Property owned or purported to be owned by the Company or any Company Subsidiary have signed written documents obligating them to assign and have validly assigned, in writing, to the Company or the Company Subsidiaries their rights and interests therein, except where such Intellectual Property automatically vested in the Company by operation of Law. No current or former directors, officers, employees, contractors or consultants of the Company or any of the Company Subsidiaries has made a written claim, or to the Company's Knowledge, threatened to make any claim, of ownership or right, in whole or in part, to any material Company Intellectual Property or to any remuneration in connection therewith.

(h) The Company and each of the Company Subsidiaries have exercised commercially reasonable efforts to protect their rights in the Trade Secrets material to the business of the Company or any of the Company Subsidiaries that are Company Intellectual Property, including through the development of policies for the protection of such Trade Secrets, and, to the Knowledge of the Company, there has been no unauthorized use, disclosure or misappropriation by any Person of any such Trade Secrets, except where failure to do so would not be material to

the Company and the Company Subsidiaries, taken as a whole. To the Company's Knowledge, each current and former employee, consultant or independent contractor of the Company or any Company Subsidiary who has had access to any Trade Secrets that are Company Intellectual Property has entered into a written agreement with the Company or Company Subsidiary to protect the secrecy and confidentiality of such Trade Secrets, except where failure to do so would not be material. In connection with the Company's and the Company Subsidiaries' license grants to third parties of any licenses to use any Source Code to any Software for any Company Product for which the Company and the Company Subsidiaries have determined to maintain as a Trade Secret, such arrangements contain customary contractual protections designed to appropriately limit the rights of such third party licensees and preserve the Company's rights to the Trade Secrets embodied by such Source Code, except where such failure to do so would not be material to the Company and the Company Subsidiaries, taken as a whole.

(i) No government funding and no facilities of a university, college, other educational institution or research center were used in the development of any Company Intellectual Property where, as a result of such funding or the use of such facilities, such entity has any right, title or interest in such Company Intellectual Property, and (ii) no former or current employee, consultant or independent contractor of the Company or any Company Subsidiary who contributed to the creation or development of any Company Intellectual Property has performed services for the government or a university, college, other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also performing services for the Company or any Company Subsidiary.

(j) To the Knowledge of the Company, since January 1, 2019, except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect, the Processing of any Personal Data by or on behalf of the Company and the Company Subsidiaries has not violated, and does not violate, any applicable Privacy and Data Security Requirements. Except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect, there is no Legal Proceeding pending, asserted in writing or threatened in writing against the Company or any of the Company Subsidiaries alleging a violation of any Privacy and Data Security Requirement or any Person's right of privacy or publicity, and, to the Knowledge of the Company, no valid basis exists for any such Legal Proceeding. Except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect, neither the Company nor its Subsidiaries has (i) received any written communications from or (ii) to the Knowledge of the Company, been the subject of any claim, charge, investigation or regulatory inquiry by a data protection authority or any other Governmental Authority, in each of (i) and (ii), regarding the Processing of Personal Data. Except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect, the execution and performance of this Agreement will not breach or otherwise cause any violation on the part of the Company or any of the Company Subsidiaries of any applicable Privacy and Data Security Requirements.

(k) To the Knowledge of the Company, the IT Assets operate and perform in all material respects sufficient to permit the operation of the Company's and Company Subsidiaries' business as currently conducted. To the Knowledge of the Company, since January 1, 2019, except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect, (i) there has been no successful security breach or unauthorized

access to or use of any of the IT Assets, and (ii) the Company has used security measures designed to protect the IT Assets from any viruses, worms, trojan horses, bugs or faults, breakdowns, contaminants or continued substandard performance that would be expected to cause any disruption or interruption in or to the use of any such IT Assets or to the business of the Company and Company Subsidiaries.

(l) Since January 1, 2019, the Company and Company Subsidiaries have (i) implemented and maintained reasonable technical, administrative and organizational safeguards to protect Personal Data and other confidential data in its possession or under its control against loss, theft, misuse or unauthorized access, use, modification, alteration, destruction, disclosure or other Proceeding, and (ii) taken reasonable steps to ensure that any third party with access to Personal Data collected by or on behalf of the Company and Company Subsidiaries has implemented and maintained the same. To the Knowledge of the Company, except as would not reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect, no Person has gained unauthorized access to, engaged in unauthorized or unlawful Processing, disclosure or use, or accidentally or unlawfully destroyed, lost or altered (i) any Personal Data related to the business of or used by the Company or the Company Subsidiaries or (ii) any IT Assets that Process Personal Data related to the business of or used by the Company or the Company Subsidiaries, its respective Personal Data processors, customers, subcontractors or vendors, or any other Persons on its or their behalf. Neither the Company nor the Company Subsidiaries has notified or plans to notify, either voluntarily or as required by any Privacy and Data Security Requirements, any affected individual, any third party, any Governmental Authority or the media of any breach or non-permitted use or Processing or disclosure of Personal Data related to the business of or used by the Company or the Company Subsidiaries.

Section 4.15 Employment Matters.

(a) Neither the Company nor any Company Subsidiary is a party to or otherwise bound by any collective bargaining agreement, Contract or other agreement or understanding with a labor union, works council, labor organization or similar organized employee representative (collectively, "***CBAs***"), nor is any such Contract, agreement or understanding presently being negotiated, nor are any Company Employees represented by any labor union, works council, or other labor organization. To the Knowledge of the Company, there is no representation or organizing campaign respecting any employees of the Company or any of the Company Subsidiaries pending or threatened, nor have there been any such campaigns since January 1, 2019. Since January 1, 2019, no labor union, works council, other labor organization, or group of Company Employees has made a demand for recognition or certification, and there are no representation or certification proceedings presently pending or threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority. There is, and since January 1, 2019, there has been, no pending or, to the Knowledge of the Company, threatened, labor strike, dispute, walkout, work stoppage, slow-down, lockout or other material labor dispute involving the Company or any of the Company Subsidiaries which, individually or in the aggregate, has resulted in, or would reasonably be expected to have a Company Material Adverse Effect. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2019, (a) neither the Company nor any Company Subsidiary has engaged in any unfair labor practice and there are no unfair labor practice charges or complaints against the Company or any Company Subsidiary pending, or, to the Knowledge of the Company, threatened, before a Governmental Authority, (b) the Company and each Company Subsidiary has been in compliance with all applicable Laws with respect to labor and employment, including all Laws relating to labor relations, employment and employment practices, occupational safety and health standards, terms and conditions of employment, wages and hours, classification of employees and independent contractors, immigration and workers' compensation, and (c) no Legal Proceeding with respect to the Company or any of the Company Subsidiaries in relation to the employment or alleged employment of any individual is ongoing, pending or, to the Knowledge of the Company, threatened. Since January 1, 2019, the Company and the Company Subsidiaries have not received or been involved in any complaints, claims or Legal Proceedings against any Company Employee relating to sexual harassment or discrimination.

Section 4.16 Insurance. All material insurance policies, material self-insurance programs and arrangements relating to the business, assets and operations of the Company and the Company Subsidiaries are set forth on Section 4.16 of the Company Disclosure Letter ("***Insurance Policies***"). To the Knowledge of the Company, all such Insurance Policies or their replacements are in full force and effect with no notices of cancellation or modification pending, all premiums due have been paid to date.

Section 4.17 Material Contracts.

(a) Except for this Agreement, Section 4.17 of the Company Disclosure Letter sets forth a list as of the Agreement Date of each Contract to which the Company or any of the Company Subsidiaries is a party to or bound by (other than a Contract solely between or among the Company and its wholly owned Company Subsidiaries) (each of the following Contracts being a "***Company Material Contract***"):

(i) that would be required to be filed by the Company as a "material contract" pursuant to Item 601(b)(10) of Regulation S-K promulgated by the SEC;

(ii) is with a related person (as defined in Item 404 of Regulation S-K of the Securities Act) that would be required to be disclosed in the Company SEC Reports;

(iii) that relates to the formation, creation, governance, economics or control of any joint venture, partnership or other similar arrangement;

(iv) that is for the acquisition or disposition of any material business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise), or that contains a material right of first negotiation, right of first refusal or similar right, in each case entered into since January 1, 2019;

(v) that is relating to the borrowing or lending of Indebtedness in a principal amount in excess of $500,000 (whether incurred, assumed, guaranteed or secured by any asset);

(vi) (A) any Contract (excluding purchase orders entered into in the ordinary course of business the forms of which have been made available to Parent) that is one of the top 10 Contracts for the purchase of materials, supplies, goods, services, equipment or other assets, measured by aggregate payments made by the Company or the Company Subsidiaries during the fiscal year ended December 31, 2021 or (B) any Contract (excluding purchase orders entered into in the ordinary course of business the forms of which have been made available to Parent) with any customer of the Company or any Company Subsidiaries who in the fiscal year ended December 31, 2021, was one of the 10 largest sources of revenues for the Company and its Subsidiaries, based on amounts paid or payable;

(vii) any Contract containing any grant of any license or covenant not to assert relating to or under Intellectual Property Rights (A) by the Company or any Company Subsidiary to a third party or (B) by a third party to the Company or any Company Subsidiary, excluding licenses of non-customized off-the-shelf Software commercially available on standard terms for an annual fee of no more than $500,000;

(viii) that contains (A) any covenant that purports to materially limit or otherwise restrict the ability of the Company or the Company Subsidiaries to compete in any business or geographic area or to use or exploit any material Company Owned Intellectual Property, a (B) "most favored nation" clause or other term providing

preferential pricing or treatment to a third party, (C) material minimum purchase obligations on the Company or any of the Company Subsidiaries or (D) any right of first negotiation, right of first refusal or similar right;

(ix) that is with any Affiliate, director, executive officer (as such term is defined in the Exchange Act), holder of 5% or more of Equity Interests of the Company or, to the Knowledge of the Company, any of their Affiliates (other than the Company) or immediate family members (other than offer letters that can be terminated at will without severance obligations and Contracts pursuant to Company Options);

(x) that is a settlement agreement that (A) requires payment by the Company or any of the Company Subsidiaries after the date hereof in excess of $500,000 or (y) imposes non-monetary obligations or restrictions on the Company or any of its Subsidiaries after the date of this Agreement which obligations or restrictions which would apply to Parent or its Affiliates following the Closing;

(xi) that is a Contract with a Governmental Authority;

(xii) any Velocity Transaction Document;

(xiii) that is a CBA; and

(xiv) the Financing Agreement.

(b) The Company has made available to Parent true and correct copies of each Company Material Contract in effect as of the Agreement Date. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) each of the Company Material Contracts is in full force and effect, and represents a valid and binding obligation of the Company or a Company Subsidiary, enforceable in accordance with its terms against the Company or the Company Subsidiary (as the case may be), to the Knowledge of the Company, each other party thereto, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally, and general principles of equity (regardless of whether such enforceability is considered in a proceeding in Law or equity), (ii) neither the Company nor any Company Subsidiary nor, to the Company's Knowledge, any other party to such Company Material Contract, is in breach of or default (or, to the Knowledge of the Company, has received notice of an alleged breach or default) under any Company Material Contract and, neither the Company nor any Company Subsidiary nor, to the Company's Knowledge, any other party to such Company Material Contract, has taken or failed to take any action that with or without notice, lapse of time or both would constitute a breach of or default under any Company Material Contract, (iii) since January 1, 2021 through the Agreement Date, neither the Company nor any Company Subsidiaries have received any written notice regarding any violation or breach or default under any Company Material Contract that has not since been cured and (iv) neither the Company nor any Company Subsidiaries have waived in writing any rights under any Company Material Contract.

Section 4.18 Real Property.

(a) Neither the Company nor any Company Subsidiary owns any real property.

(b) Section 4.18(b) of the Company Disclosure Letter sets forth a true and correct list of all properties leased, subleased, licensed or occupied by the Company or a Company Subsidiary as of the Agreement Date (collectively, the "***Leased Real Property***") and the Real Property Leases in connection therewith. Except as would not reasonably be expected to have a Company Material Adverse Effect, (i) the Company or a Company Subsidiary has a valid leasehold interest in all of the Leased Real Property, free and clear of all Liens (except for Permitted Liens), (ii) each Real Property Lease is valid and binding on the Company or a Company Subsidiary and, to the Company's Knowledge, each counterparty thereto, and is full force and effect, (iii) neither the Company nor any Company Subsidiary is in breach of or default under any Real Property Lease, nor, to the Company's Knowledge, is any other party to such Real Property Lease, and (iv) neither the Company nor any Company Subsidiary has received any written notice from the counterparty under any Real Property Lease that such counterparty intends to terminate such Real Property Lease. The Company has delivered or made available to Parent complete and accurate copies of all Real Property Leases.

(c) Except as set forth in Section 4.18 of the Company Disclosure Letter, neither the Company nor any Company Subsidiary has leased, subleased, licensed, transferred or mortgaged any portion of any Leased Real Property to any Person.

(d) Neither the Company nor any Company Subsidiary has received any written notice of existing, pending or threatened (i) condemnation proceedings affecting the Leased Real Property, or (ii) zoning, building code or other moratorium proceedings, or similar matters which would reasonably be expected to materially and adversely affect the ability to use and operate the Leased Real Property as currently used and operated.

Section 4.19 Environmental Matters. Except for those matters that would not reasonably be expected to have a Company Material Adverse Effect, (a) each of the Company and the Company Subsidiaries is, and since January 1, 2019 has been, in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining or complying with all Governmental Authorizations required under Environmental Laws for the operation of its business; (b) as of the date hereof, there is no investigation, suit, claim, action or Legal Proceeding relating to or arising under any Environmental Law that is pending or, to the Knowledge of the Company, threatened in writing against the Company or any Company Subsidiaries or, to the Knowledge of the Company, the Leased Real Property; (c) as of the date hereof, neither the Company nor any of the Company Subsidiaries has received any written notice, report or other information of or entered into any legally binding agreement, order, settlement, judgment, injunction or decree involving uncompleted, outstanding or unresolved violations, liabilities or requirements on the part of the Company or any Company Subsidiaries relating to or arising under Environmental Laws; (d) to the Knowledge of the Company: (i) no Person has been exposed to any Hazardous Materials at a property or facility of the Company or any Company Subsidiaries at levels in excess of applicable permissible exposure levels; and (ii) there are and have been no Hazardous Materials present or Released on, at, under or from any property or facility, including the Leased Real Property, in a manner and concentration that would reasonably be expected to

result in any claim against or liability of the Company or any Company Subsidiaries under any Environmental Law; and (e) neither the Company nor any Company Subsidiaries has assumed, undertaken, or otherwise become subject to any liability of another Person relating to Environmental Laws other than any indemnities in Company Material Contracts or Real Property Leases.

Section 4.20 Title to Assets. Each of the Company and the Company Subsidiaries has good and valid title to all material assets (excluding intellectual property, which is covered under Section 4.14) owned by it as of the date of this Agreement, including all material assets reflected on the Balance Sheet, except (a) for assets sold or otherwise disposed of in the ordinary course of business since the date of the Balance Sheet, (b) to the extent such assets are assets owned, leased or used or held for use by Velocity or the Velocity Buyer, and (c) except where such failure would not reasonably be expected to have a Company Material Adverse Effect.

Section 4.21 Inapplicability of Anti-takeover Statutes. Assuming the accuracy of the representations and warranties of Merger Sub and Parent in Section 5.4, the Company Board has taken all appropriate and necessary actions to render any and all limitations on mergers, business combinations and ownership of shares of the Company Common Stock as set forth in the Company's Organizational Documents or in any state takeover or anti-takeover statute or similar Law (including NRS 78.378 to 78.3793, inclusive, and NRS 78.411 to 78.444, inclusive) (collectively, the "***Takeover Provisions***") to be inapplicable to this Agreement and the Transactions, including the Offer and the Merger. The Company is not, and at no time from and including the Agreement Date through and including the Offer Closing Date will the Company be, an "issuing corporation" (as defined in NRS 78.3789).

Section 4.22 No Other Parent Representations or Warranties. Except as and only to the extent expressly set forth in the representations and warranties made by the Parent and Merger Sub and contained in Article V, the Company hereby acknowledges and agrees that neither Parent nor Merger Sub, or any of their respective Affiliates or Representatives or any other Person, has made or is making any other express or implied representation or warranty with respect to Parent, Merger Sub or their respective business or operations, including with respect to any information provided or made available to the Company or any of its Affiliates or Representatives or any other Person.

## ARTICLE V
## REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Each of Merger Sub and Parent represents and warrants to the Company as follows:

Section 5.1 Organization. Each of Parent and Merger Sub is a corporation, limited liability company, limited partnership or other legal entity duly organized, validly existing and, where applicable in good standing under the Laws of the jurisdiction of its organization (to the extent the "good standing" concept is applicable in the case of any jurisdiction outside the United States), except where the failure to be so organized, existing, or in good standing would not reasonably be expected to have a material adverse effect on the ability of Merger Sub or Parent to consummate the Transactions. Each of Parent and Merger Sub has all requisite corporate or similar power and authority to enable it to own, operate and lease its properties and to carry on its business as now conducted. Parent has delivered or made available to the Company complete and correct copies of the articles of incorporation, bylaws or other constituent documents, as amended to the Agreement Date, of Merger Sub.

Section 5.2 Authorization; No Conflict.

(a) The execution, delivery and performance by each of Parent and Merger Sub of this Agreement, and the consummation by each of Parent and Merger Sub of the Transactions are within the corporate or similar powers of Parent and Merger Sub, as applicable, and, subject to the completion of the actions contemplated by Section 6.15, have been duly authorized by all necessary corporate or similar action on the part of each of Parent and Merger Sub. Each of Parent and Merger Sub has duly executed and delivered this Agreement and, assuming due authorization, execution and delivery by the Company, this Agreement constitutes a legal, valid and binding agreement of each of Parent and Merger Sub enforceable against each of Parent and Merger Sub, as applicable, in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

(b) The execution, delivery and performance by Merger Sub and Parent of this Agreement and the consummation by Merger Sub and Parent of the Transactions require no action by or in respect of or filing with any Governmental Authority, other than (i) the filing of articles of merger with respect to the Merger with the Office of the Nevada Secretary of State and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) compliance with any applicable requirements of the Securities Act and the Exchange Act, and (iii) any additional actions or filings, except those that the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Parent's or Merger Sub's ability to consummate the Offer, the Merger and the Transactions.

(c) The execution, delivery and performance by Merger Sub and Parent of this Agreement and the consummation of the Transactions do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the articles of incorporation or certificate of incorporation, as applicable, or bylaws or other constituent documents of Merger Sub and Parent, (ii) assuming compliance with the matters referred to in Section 5.2(b), contravene,

conflict with or result in a violation or breach of any provision of any applicable Law or Order, (iii) assuming compliance with the matters referred to in Section 5.2(b), require any consent or other action by any Person under, result in any breach of, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, under, or cause or permit the termination, cancellation, acceleration or the loss of any benefit to which Parent or Merger Sub is entitled under, any Contract, or (iv) result in the creation or imposition of any Lien on any asset of Parent or Merger Sub, with only such exceptions, in the case of each of clauses (ii) through (iv), as would not reasonably be expected, individually or in the aggregate, to have a material adverse effect on Parent's or Merger Sub's ability to consummate the Offer, the Merger and the Transactions.

Section 5.3 No Legal Proceedings Challenging the Merger. There are no Legal Proceedings pending or, to the knowledge of Parent, threatened, to which Parent or any Subsidiary of Parent is a party that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on Parent's ability to consummate the Merger and the Transactions. As of the Agreement Date, (a) there is no Legal Proceeding pending against Merger Sub or Parent challenging the Offer or the Merger; and (b) to the Knowledge of Parent, no Legal Proceeding has been threatened against Merger Sub or Parent challenging the Offer or the Merger.

Section 5.4 Ownership of Company Common Stock. Other than as a result of this Agreement, none of Parent, Merger Sub or any of their respective Subsidiaries beneficially own (as such term is used in Rule 13d-3 promulgated under the Exchange Act) or owns (as such term is defined in the NRS) any shares of Company Common Stock or any options, warrants or other rights to acquire Company Common Stock or other securities of, or any other economic interest (through derivatives, securities or otherwise) in the Company. None of Merger Sub or Parent or any of their "affiliates" or "associates" are, or at any time during the two (2) years has been, an "interested stockholder" of the Company as defined in the NRS. Prior to the Agreement Date, neither Parent nor Merger Sub has taken, or authorized or permitted any Representatives of Parent or Merger Sub to take, any action that would reasonably be expected to cause, Parent, Merger Sub or any of their "affiliates" or "associates" to be deemed an "interested stockholder" as defined in the NRS.

Section 5.5 Broker's or Finder's Fees. No agent, broker, Person or firm acting on behalf of Parent or any of its Subsidiaries or under Parent's or any of its Subsidiaries' authority is or will be entitled to any advisory or broker's or finder's or other similar fee or commission from any of the parties hereto in connection with any of the Transactions.

Section 5.6 Activities of Merger Sub. Merger Sub was formed solely for the purpose of engaging in the Transactions. Merger Sub has not and will not prior to the Effective Time engage in any activities other than those contemplated by this Agreement and has, and will have as of immediately prior to the Effective Time, no liabilities other than those incident to its formation and pursuant to the Transactions.

Section 5.7 Disclosure Documents. The Schedule TO and the other Offer Documents will, when filed with the SEC, and any amendments or supplements thereto, when filed with the SEC, at any time such document is amended or supplemented or at the time such document is first published, sent or given to the Company's stockholders, as applicable, comply in all material

respects with the applicable requirements of the Exchange Act. None of the information supplied or to be supplied by or on behalf of Merger Sub or Parent or any of its Subsidiaries expressly for inclusion or incorporation by reference in the Schedule TO and the other Offer Documents, and the Schedule 14D-9, at the time such document is filed with the SEC, at any time such document is amended or supplemented or at the time such document is first published, sent or given to the Company's stockholders, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The representations and warranties contained in this Section 5.7 shall not apply to statements or omissions included or incorporated by reference in the Schedule TO or other Offer Documents, as applicable, based upon information supplied by the Company or any of its Representatives specifically for use or incorporation by reference therein.

Section 5.8 Financing Arrangements.

(a) Parent has delivered to the Company a true, correct and complete copy of the fully executed equity commitment letter as of the date hereof (together with all exhibits, annexes, schedules and term sheets attached thereto and as amended, modified, supplemented, replaced or extended from time to time after the Agreement Date, the "***Equity Commitment Letter***") from the Investor pursuant to which the Investor has agreed to make an equity investment in Parent, subject to the terms and conditions therein, in cash in the aggregate amount set forth therein (the "***Equity Financing***").

(b) As of the date hereof, the Equity Commitment Letter is in full force and effect and constitutes the valid, binding and enforceable obligation of Parent, Merger Sub and the Sponsor, as applicable, and, to the knowledge of Parent, the other party thereto, enforceable in accordance with their terms (subject to the Enforceability Limitations). As of the date hereof, (i) the Equity Commitment Letter has not been amended or modified in any manner, and (ii) the commitments contained therein have not been terminated, reduced, withdrawn or rescinded in any respect by Parent, Merger Sub or the Investor or, to the knowledge of Parent, any other party thereto, and no such termination, reduction, withdrawal or rescission is contemplated by Parent, Merger Sub or the Investor or, to the knowledge of Parent, any other party thereto.

(c) The net proceeds of the Equity Financing, when funded in accordance with the Equity Commitment Letter will be, in the aggregate, sufficient to make the payment of all amounts payable pursuant to Article I and Article II in connection with or as a result of the Offer and the Merger.

(d) The 11th Amendment Effective Date is subject solely to the conditions set forth in the 11th Amendment. Assuming the satisfaction of the conditions set forth in Section 7.1 and the performance by the Company of its obligations under this Agreement, Parent is not aware of any fact or occurrence that would reasonably be expected to cause the conditions to the 11th Amendment Effective Date to not be satisfied.

Section 5.9 Certain Arrangements. There are no Contracts or commitments to enter into Contracts between Parent, Merger Sub or any of their controlled Affiliates, on the one hand, and any director, officer or employee of the Company or any of the Company Subsidiaries, on the other hand.

Section 5.10 No Other Company Representations or Warranties. Except as and only to the extent expressly set forth in the representations and warranties made by the Company and contained in Article IV or the certificate to be provided pursuant to clause (c)(vii) of Annex A, Merger Sub and Parent hereby acknowledge and agree that: (a) neither the Company nor any Company Subsidiaries, or any of their respective Affiliates or Representatives or any other Person, has made or is making any other express or implied representation or warranty with respect to the Company or Company Subsidiaries or their respective business or operations, including with respect to any information provided or made available to the Merger Sub, Parent or any of their respective Affiliates or Representatives or any other Person; and (b) except in the case of Fraud, neither the Company nor any Company Subsidiaries, or any of their respective Affiliates or Representatives or any other Person will have or be subject to any liability or indemnification obligation or other obligation of any kind or nature to Merger Sub, Parent or any of their respective Affiliates or Representatives or any other Person, resulting from the delivery, dissemination or any other distribution to Merger Sub, Parent or any of their respective Affiliates or Representatives or any other Person, or the use by Merger Sub, Parent or any of their respective Affiliates or Representatives or any other Person, of any such information provided or made available to any of them by the Company or any Company Subsidiaries, or any of their respective Affiliates or Representatives or any other Person, including any information, documents, estimates, projections, forecasts or other forward-looking information, business plans or other material provided or made available to Merger Sub, Parent or any of their respective Affiliates or Representatives or any other Person, in "data rooms," confidential information memoranda or management presentations in anticipation or contemplation of the Merger or any of the Transactions.

## ARTICLE VI
## COVENANTS

Section 6.1 Access and Investigation. Subject to the Confidentiality Agreement, during the period commencing on the Agreement Date and ending on the earlier of (a) the Effective Time and (b) the termination of this Agreement pursuant to Section 8.1 (such period being referred to herein as the "***Interim Period***"), the Company shall, and shall cause the Company Subsidiaries and its and their respective Representatives to, upon reasonable advance notice to the Company from Parent: (i) provide Parent and Parent's Representatives with reasonable access during normal business hours to the Company's and the Company Subsidiaries' books, records, Tax Returns, material operating and financial reports, work papers, assets, officers, personnel, offices and other facilities, Contracts and other documents and information relating to the Company and the Company Subsidiaries and (ii) provide Parent and Parent's Representatives with such copies of the books, records, Tax Returns, work papers, Contracts and other documents and information relating to the Company and the Company Subsidiaries, and with such additional financial, operating and other data and information regarding the Company and the Company Subsidiaries, as Parent may reasonably request; provided, however, that any such access shall be conducted at Parent's expense, under the supervision of appropriate personnel of the Company and in such a manner not to unreasonably interfere with the normal operation of the business of the Company or

create material risk of damage or destruction to any material assets or property of the Company. Any such access shall be subject to the Company's reasonable security measures and insurance requirements and shall not include invasive testing. Information obtained by Merger Sub or Parent pursuant to this Section 6.1 will constitute "Evaluation Material" under the Confidentiality Agreement and will be subject to the provisions of the Confidentiality Agreement. Nothing in this Section 6.1 will require the Company to permit any inspection, or to disclose any information, that in the reasonable judgment of the Company would: (A) violate any of its or its Affiliates' respective obligations with respect to confidentiality; (B) result in a violation of applicable Law; (C) result in the loss of a legal protection afforded by the attorney-client privilege or the attorney work product doctrine or similar privilege; or (D) is commercially sensitive (as determined by the Company in its sole discretion), in each case, so long as the Company has reasonably cooperated with Parent to either permit such inspection of or to disclose such information on a basis that does not waive such privilege with respect thereto, disclose such information subject to execution of a joint defense agreement in customary form, and/or limit disclosure to external counsel of Parent. Notwithstanding anything to the contrary in this Section 6.1, the Company may satisfy its obligations set forth above by electronic means if physical access would not be permitted or reasonably practical in light of any COVID-19 Measures.

Section 6.2 Operation of the Company's Business.

(a) Except (i) as expressly contemplated, required or permitted by this Agreement, (ii) as required by applicable Law, (iii) as set forth in Section 6.2(a) or Section 6.2(b) of the Company Disclosure Letter, (iv) as consented to in writing by Parent (such consent not to be unreasonably withheld, conditioned or delayed) or (v) for any actions taken reasonably and in good faith in response to any COVID-19 Measure or COVID-19 (provided, that, with respect to actions taken or omitted to be taken in reliance on this clause (v), the Company shall provide prior notice to and consult in good faith with Parent prior to taking such action), during the Interim Period, the Company shall and shall cause the Company Subsidiaries to: (A) ensure that it conducts its and their respective businesses in the ordinary course in all material respects and in compliance in all material respects with all applicable Laws; (B) use commercially reasonable efforts to preserve intact its and their respective current business organizations, keep available the services of its and their respective current officers and employees and maintain its and their respective relations and goodwill with material customers, suppliers, landlords, Governmental Authorities and other Persons having material business relationships with the Company or the Company Subsidiaries; and (C) keep in full force and effect all appropriate insurance policies covering all material assets of the Company.

(b) Except (v) as expressly contemplated, required or permitted by this Agreement, (w) as required by applicable Law, (x) as set forth in Section 6.2 of the Company Disclosure Letter or (y) as consented to in writing by Parent (such consent not to be unreasonably withheld, conditioned or delayed, other than with respect to clauses (i), (ii), (iii), (iv) (solely as it relates to the Company Charter Documents), (xviii), (xix) and (xx) (to the extent related to the foregoing), with respect to which Parent may withhold, condition or delay the consent in its sole discretion), during the Interim Period, the Company shall not and shall cause the Company Subsidiaries not to:

(i) establish a record date for, declare, accrue, set aside or pay any dividend, make or pay any dividend or other distribution (whether in cash, stock, property or otherwise) in respect of any shares of capital stock or any other Company or Company Subsidiaries securities (other than dividends or distributions paid in cash from a direct or indirect wholly owned Company Subsidiary to the Company or another direct or indirect wholly owned Company Subsidiary); adjust, split, combine or reclassify any capital stock or otherwise amend the terms of any Company or Company Subsidiary securities; or acquire, redeem or otherwise reacquire or offer to acquire, redeem or otherwise reacquire any shares of capital stock or other securities, other than (1) the withholding or retirement of shares of Company Common Stock to satisfy Tax obligations with respect to Company Equity Awards outstanding on the Agreement Date in accordance with the terms of such Company Equity Awards and (2) the acquisition by the Company of shares of Company Common Stock in connection with the surrender of shares of Company Common Stock by holders of Company Options outstanding on the Agreement Date to pay the exercise price thereof in accordance with the terms of such Company Options.

(ii) sell, issue, grant or authorize the sale, issuance, or grant of any Equity Interests (including Company Equity Awards), except that (x) the Company may issue shares of Company Common Stock pursuant to the exercise or settlement of Company Equity Awards under the Stock Plans outstanding on the Agreement Date in accordance with the terms of such Company Equity Awards; and (y) the Company may issue shares of Company Common Stock in connection with the exercise of Warrants pursuant to the Warrant Documentation;

(iii) except as otherwise expressly required by Section 2.5, amend or otherwise modify any of the terms of any Company Equity Awards;

(iv) amend or permit the adoption of any amendment to the Company Charter Documents or the articles or certificate of incorporation and bylaws (or other similar organizational documents) of any of the Company Subsidiaries;

(v) acquire, by means of a merger, consolidation, recapitalization or otherwise, (1) any Equity Interest of any other Person or (2) any assets (other than (x) purchases pursuant to commitments under Contracts of the Company or any Company Subsidiary as in effect on the date of this Agreement and made available to Parent or (y) acquisitions of raw materials or supplies in the ordinary course of business) or otherwise effect, propose, become a party to or adopt a plan with respect to any merger, liquidation or partial liquidation, dissolution, restructuring, consolidation, share exchange,

business combination, amalgamation, recapitalization, reclassification of shares, stock split, reverse stock split, division or subdivision of shares, consolidation of shares, reorganization of the Company or similar transaction;

(vi) form any Company Subsidiary or enter into any joint venture, partnership, limited liability corporation or similar arrangement;

(vii) make or authorize any capital expenditure other than any capital expenditure that (A) is provided for in the Company's capital expense budget delivered to Parent prior to the date of this Agreement, which expenditures shall be in accordance with the categories set forth in such budget, or (B) in an amount, in the aggregate, of less than $250,000;

(viii) (A) amend or modify in any material respect, waive any rights under, terminate, replace or release, settle or compromise any material claim, liability or obligation under any Real Property Lease or (B) enter into any Contract which if entered into prior to the date hereof would have been a Real Property Lease;

(ix) sell, assign, transfer or otherwise dispose of, lease or license or grant any right to, assets or property material to the Company and the Company Subsidiaries, taken as a whole, to any other Person, except for dispositions of inventory in the ordinary course of business;

(x) sell, lease, sublease, license, sublicense, assign or otherwise grant rights under any material Company Intellectual Property (except for non-exclusive licenses granted to third parties in the ordinary course of business) or transfer, cancel, abandon or fail to renew, maintain or diligently pursue applications for or otherwise dispose of any Company Intellectual Property (other than non-exclusive licenses granted to third parties in the ordinary course of business);

(xi) (A) lend money to, or make any advances to, capital contributions to or investments in, any Person (other than (x) advances to Company Employees for travel and other business related expenses in the ordinary course of business or (y) loans, advances, capital contributions or investments to or in a direct or indirect wholly owned Company Subsidiary), (B) guarantee any Indebtedness, (C) incur any Indebtedness or (D) amend, terminate or modify the Financing Agreement or waive any provision thereto;

(xii) except as required pursuant to the terms of any Company Plan in effect as of the Agreement Date or applicable Law, (A) establish, adopt, enter into or amend in any respect any Company Plan or any CBA, other than entry into offer letters with new hires permitted by subsection (D) hereof in the ordinary course of business (provided that such offer letter does not provide for the grant of any equity or equity-based awards, change in control benefits, severance or transaction or retention bonus); (B) amend or waive any of its rights under, or accelerate the vesting under, any provision of any Company Plan; (C) except for annual merit increases in annual base salaries and cash bonuses made in the ordinary course of business to employees of the Company and the Company Subsidiaries with an annual base salary that does not exceed $70,000, grant any increase in

compensation, bonuses or other benefits to any current directors, officers, or employees of the Company and the Company Subsidiaries; or (D) hire, terminate the employment or services of (other than for "cause", as determined by the Company in good faith), or layoff (or give notice of any such actions to) any employee or individual independent contractor with an annual base compensation in excess of $70,000 (other than any hiring of any such employee to replace any departed employees in the ordinary course of business and consistent with the Company budget for 2022 and previously provided to Parent);

(xiii) enter into or amend any severance, termination, employment or consulting agreement with any current or former Company Employee, director or independent contractor of the Company or any Company Subsidiary with an annual base compensation in excess of $70,000;

(xiv) other than as required by changes in GAAP or SEC rules and regulations, change any of its methods of financial accounting, cash management or financial accounting practices in any material respect;

(xv) (A) make, change or rescind any material Tax election; (B) settle or compromise any material Tax claim or assessment or enter into any material closing agreement with respect to Taxes; (C) change (or request to change) any material method of accounting for Tax purposes or annual Tax accounting period; (D) file any material amended Tax Return, (E) surrender any right to claim a material Tax refund, or (F) or consent to any consent to any extension or waiver of the limitation period applicable to any material tax claim or assessment;

(xvi) commence any Legal Proceeding, except with respect to: (A) routine matters in the ordinary course of business; (B) in such cases where the Company reasonably determines in good faith that the failure to commence suit would result in a material impairment of a valuable aspect of its business (provided, that the Company consults with Parent and considers in good faith the views and comments of Parent with respect to any such Legal Proceeding prior to commencement thereof); or (C) in connection with a breach of this Agreement or any other agreements contemplated hereby;

(xvii) settle, release, waive or compromise any Legal Proceeding or other claim (or threatened Legal Proceeding or other claim), other than (A) any Transaction Litigation (subject to Section 6.9) or (B) any Legal Proceeding relating to a breach of this Agreement or any other agreements contemplated hereby and (1) that results solely in a monetary obligation involving only the payment of monies by the Company of not more than $250,000 in the aggregate; (2) that results solely in a monetary obligation that is funded by an indemnity obligation to, or an insurance policy of, the Company and the payment of monies by the Company that together with any settlement made under clause (1) are not more than $250,000 in the aggregate (not funded by an indemnity obligation or through insurance policies); or (3) that results solely in a monetary obligation involving payment by the Company of an amount not greater than the amount specifically reserved in accordance with GAAP with respect to such Legal Proceedings or claim on the Balance Sheet;

(xviii) adopt or implement any stockholder rights plan or similar arrangement;

(xix) (A) enter into any Contract reasonably expected to cause the Company to abandon, terminate, delay, fail to consummate, materially impede or interfere with the Transactions; or (B) other than in the ordinary course of business, or as required by the terms thereof, enter into, renew or extend, materially amend or terminate any Company Material Contract; provided, that no Contract that would be a Company Material Contract of the type described in Section 4.17(a)(viii) may be entered into without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed);

(xx) (A) negotiate, modify, extend or enter into any CBA or recognize or certify any labor union, labor organization, works council, or group of employees as the bargaining representative for any employees of the Company or the Post-Closing Company Subsidiaries; or (B) implement or announce any employee layoffs, plant closings, reductions in force, furloughs, temporary layoffs, salary or wage reductions, work schedule changes or other such actions that could implicate the WARN Act; or

(xxi) authorize any of, or commit, resolve, propose or agree in writing or otherwise to take any of, the foregoing actions.

(c) Notwithstanding anything to the contrary in Section 6.2(a), Section 6.2(b) or Section 6.3, the Company and its Representatives shall be permitted to take the actions set forth in Section 6.2(c) of the Company Disclosure Letter and such activities shall not constitute the receipt of an Acquisition Proposal.

Section 6.3 Acquisition Proposals.

(a) No Solicitation. From the Agreement Date until the earlier of the Offer Acceptance Time and the termination of this Agreement in accordance with Article VIII, and except as expressly permitted by this Section 6.3, the Company shall not, and shall cause its Subsidiaries and its and their respective directors and officers not to, and shall direct other Representatives not to, directly or indirectly:

(i) initiate, solicit, propose or knowingly encourage or knowingly facilitate any inquiries or the making of any inquiry, proposal or offer that constitutes, or would reasonably be expected to lead to, any Acquisition Proposal (other than discussions solely to inform such Person of the provisions contained in this Section 6.3(a));

(ii) engage in, continue or otherwise participate in any discussions (other than, in response to an unsolicited inquiry from any Person relating to an Acquisition Proposal, solely informing such Person of the provisions contained in this Section 6.3(a)) or negotiations regarding, or provide any non-public information or data to any Person (other than Parent, Merger Sub or their respective Representatives) relating to, any Acquisition Proposal or any proposal or offer that would reasonably be expected to lead to an Acquisition Proposal;

(iii) otherwise knowingly facilitate any effort or attempt to make an Acquisition Proposal;

(iv) except as expressly permitted by Section 6.3(e), approve, endorse, recommend, or execute or enter into any letter of intent, agreement in principle, term sheet, memorandum of understanding, merger agreement, acquisition agreement, joint venture agreement or other similar Contract relating to an Acquisition Proposal (other than an Acceptable Confidentiality Agreement) (an "***Alternative Acquisition Agreement***"). As soon as reasonably practicable after the date of this Agreement, the Company shall deliver a written notice to each Person that entered into a confidentiality agreement in anticipation of potentially making an Acquisition Proposal within the one hundred eighty (180) days prior to the Agreement Date requesting the prompt return or destruction of all confidential information previously furnished to any Person within the one hundred eighty (180) prior to the Agreement Date for the purposes of evaluating a possible Acquisition Proposal; or

(v) furnish to any Person (other than Parent, Merger Sub or their respective Representatives) any non-public information relating to the Company or any of its Subsidiaries or afford to any such Person access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company and its Subsidiaries, in any such case with the intent to induce, or that would reasonably be expected to result in, the making, submission or announcement of an Acquisition Proposal.

(b) Exceptions. Notwithstanding anything to the contrary in this Agreement, the Company and its Representatives may prior to the Acceptance Time (i) provide information in response to a request therefor by a Person who makes an unsolicited bona fide written Acquisition Proposal if the Company did not violate Section 6.3(a) in respect of such Person and following the Agreement Date if (x) such Acquisition Proposal did not result from a violation of Section 6.3(a); (y) prior to providing such information, the Company receives from such Person an executed confidentiality agreement on terms that, taken as a whole, are no less favorable in the aggregate to the other party than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreement need not contain a standstill provision or otherwise prohibit the making, or amendment, of an Acquisition Proposal and that does not prohibit the Company from providing any information to Parent or otherwise prohibit the Company from complying with its obligations under this Section 6.2(c) (any confidentiality agreement satisfying the criteria of this clause (y) being an "***Acceptable Confidentiality Agreement***")) and (z) the Company promptly (and in any event within twenty-four (24) hours thereafter) makes available to Parent any material non-public information concerning the Company or the Company Subsidiaries that the Company provides to any such Person that was not previously made available to Parent; and (ii) engage or participate in any discussions or negotiations with any Person who has made such an Acquisition Proposal, if and only if, (A) prior to taking any action described in clause (i) or (ii) above, the Company Board determines in good faith, after consultation with financial advisors and outside legal counsel, that the failure to take such action would be inconsistent with the directors' fiduciary duties under applicable Law and (B) prior to taking any action described in clause (i) or (ii) above, the Company Board has determined in good faith based on information then available that such Acquisition Proposal either constitutes a Superior Proposal or is reasonably likely to result in a Superior Proposal.

(c) Notice of Acquisition Proposals. The Company agrees that it will promptly (and, in any event, within twenty-four (24) hours) notify Parent in writing (i) if any inquiries, proposals or offers with respect to an Acquisition Proposal are received by the Company, its Subsidiaries or any of their respective Representatives and the identities of the Person(s) making such inquiry, proposal or offer, (ii) if any non-public information is requested from the Company in connection with an Acquisition Proposal and (iii) if any discussions or negotiations regarding an Acquisition Proposal are sought to be initiated or continued with the Company, or any of its Representatives, and in each case will provide, in connection with such notice, a summary of the material terms and conditions of any proposals, offers or requests (including, if applicable, any modifications to such proposals, offers or requests and unredacted copies of any material and relevant documents and agreements relating thereto, written requests, proposals or offers, including proposed agreements). Thereafter, the Company shall keep Parent reasonably informed, on a prompt basis (and, in any event, within twenty-four (24) hours), of the status and material terms of any such proposals, offers, or amendments in connection therewith) and the status of any such discussions or negotiations.

(d) No Change of Recommendation or Alternative Acquisition Agreement. Subject to Section 6.3(e), the Company Board and each committee of the Company Board shall not:

(i) (A) fail to make, withhold, withdraw, qualify or modify (or publicly propose to withhold, withdraw, qualify or modify), in a manner adverse to Parent or Merger Sub, the Company Board Recommendation, (B) approve, authorize, endorse, adopt or recommend (publicly or otherwise) (or publicly propose to approve, authorize, endorse, adopt or recommend) an Acquisition Proposal, (C) fail to recommend, in the solicitation/recommendation statement on Schedule 14D-9, against any Acquisition Proposal that is a tender offer or exchange offer subject to Regulation 14D promulgated under the Exchange Act (other than any tender offer or exchange offer by Parent or Merger Sub) within ten (10) Business Days after the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of such tender offer or exchange offer (including by taking no position with respect to the acceptance of such tender offer or exchange offer by the Company's stockholders) within five (5) Business Days after the commencement of such tender offer or exchange offer or (D) if an Acquisition Proposal has been publicly disclosed, fail to publicly recommend against any such Acquisition Proposal and publicly reaffirm the Company Board Recommendation upon Parent's written request, in each case, within five (5) Business Days after public disclosure of the Acquisition Proposal; provided that Parent may make such request only once with respect to such Acquisition Proposal unless such Acquisition Proposal is subsequently materially modified, in which case Parent may make such request once each time such material modification is made (any action described in clauses (A) through (D), a "***Change of Recommendation***"); or

(ii) cause or permit the Company or any of its Subsidiaries to enter into an Alternative Acquisition Agreement (other than any Acceptable Confidentiality Agreement entered into in accordance with Section 6.3(b)) relating to any Acquisition Proposal.

(e) Change of Recommendation / Superior Proposal Termination. Notwithstanding anything to the contrary in this Agreement, (x) the Company Board may make a Change of Recommendation at any time prior to the Offer Acceptance Time (1) if the Company receives a bona fide unsolicited written Acquisition Proposal following the Agreement Date that did not result from a violation or breach of Section 6.2 and has not been withdrawn and the Company Board determines in good faith (after consultation with the Company's outside legal and financial advisors) based on the information then available that such Acquisition Proposal constitutes a Superior Proposal or (2) in response to a Company Intervening Event, in either case of (1) or (2), only if the Company Board determines in good faith that the failure to take such action would be inconsistent with the directors' fiduciary duties under applicable Law and (y) if the Company Board is permitted to make a Change of Recommendation pursuant to clause (x)(1), the Company may also terminate this Agreement pursuant to Section 8.1(f) to enter into an Alternative Acquisition Agreement with respect to the applicable Superior Proposal; provided, however, that neither the Company Board or the Company shall take any of the foregoing actions unless:

(i) the Company shall have complied with its obligations under this Section 6.3(e);

(ii) the Company shall have provided prior written notice (a "***Determination Notice***") to Parent at least five (5) Business Days in advance (the "***Notice Period***") to the effect that the Company Board intends to take such action and specifying in writing, in reasonable detail the circumstances giving rise to such proposed action, including, in the case such action is proposed to be taken in connection with an Acquisition Proposal, the information specified by Section 6.3(c) with respect to such Acquisition Proposal (it being understood and agreed that the delivery of a Determination Notice shall not, in and of itself, be deemed a Change of Recommendation);

(iii) the Company shall have, during the Notice Period, negotiated with, Parent and its Representatives in good faith (to the extent Parent desires to negotiate) to make such adjustments in the terms and conditions of this Agreement such that (A) the failure to take such action would no longer be inconsistent with the directors' fiduciary duties under applicable Law and (B) with respect to any such action to be taken in connection with an Acquisition Proposal, such Acquisition Proposal ceases to constitute a Superior Proposal; provided, however, that in the event of any material revision to the terms of such Superior Proposal or any material changes to the event that the Company Board has determined to be a Company Intervening Event, as the case may be, the Company shall be required to deliver a new Determination Notice to Parent and to comply with the requirements of Section 6.3(e)(ii) and this Section 6.3(e)(iii) with respect to such new Determination Notice and the revised Superior Proposal or Company Intervening Event, as the case may be contemplated thereby (provided, that the notice period for any such successive written notices shall be three (3) Business Days instead of five (5) Business Days);

(iv) at or following the end of such Notice Period, the Company Board shall have determined in good faith based on the information then available that (A) failure to take such action would continue to be inconsistent with the directors' fiduciary duties under applicable Law and (B) with respect to any such action to be taken in connection

with an Acquisition Proposal, such Acquisition Proposal continues to constitute a Superior Proposal, in each case taking into account any revisions to this Agreement made or proposed in writing by Parent prior to the time of such determination pursuant to clause (iii) above; and

(v) in the event of a termination of this Agreement to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal, the Company shall have validly terminated this Agreement in accordance with Section 8.1 and paid the Company Termination Fee in accordance with Section 8.4.

(f) Certain Permitted Disclosure. Nothing contained in this Section 6.3 shall be deemed to prohibit the Company or the Company Board from (i) taking and disclosing to the Company's stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to the Company's stockholders); provided, that any such disclosure shall be deemed to be a Change of Recommendation unless the Company Board expressly publicly reaffirms the Company Board Recommendation within five (5) Business Days following any written request by Parent, or (ii) making any "stop-look-and-listen" communication to the Company's stockholders pursuant to Rule 14d-9(f) under the Exchange Act (or any similar communications to the Company's stockholders); provided, however, that the Company Board shall not make or resolve to make a Change of Recommendation except in accordance with Section 6.3(e) and any statement or disclosure by the Company or the Company Board pursuant to this Section 6.3(f) must be subject to the terms and conditions of this Agreement and will not limit or otherwise affect the obligations of the Company or the Company Board and the rights of Parent under this Section 6.3.

(g) Existing Discussions. Upon execution and delivery of this Agreement, the Company agrees that it will, and will cause its Subsidiaries and direct its and their respective Representatives, to (i) cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any Acquisition Proposal, (ii) immediately cease providing any information to any such Person or its Representatives, and (iii) promptly terminate all access granted to any such Person and its Representatives to any physical or electronic data room.

(h) Breach By Representatives. The Company agrees that any breach of this Section 6.3 by any of its Subsidiaries or their respective Representatives shall be deemed to be a breach of this Agreement by the Company.

Section 6.4 Filings; Other Actions; Notification.

(a) Cooperation. Subject to the terms and conditions set forth in this Agreement, the Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement and applicable Laws, including the Antitrust Laws, to consummate and make effective the Offer and the Merger when required in accordance with this Agreement, and execute and deliver any additional instruments necessary to consummate the Offer, the Merger and the other Transactions and to fully carry out the purposes of this Agreement. Parent shall be

responsible for all filing fees payable to a Governmental Authority in connection with all filings pursuant to Antitrust Laws hereunder. The Company and Parent, and their respective Subsidiaries and Representatives, shall, unless prohibited by applicable Law or the applicable Governmental Authority, (i) keep one another promptly apprised of any substantive communications with a Governmental Authority concerning the Offer, the Merger or any of the other Transactions; (ii) respond as promptly as practicable to all requests for additional information from a Governmental Authority under any Antitrust Law concerning the Offer, the Merger or any of the other Transactions; (iii) provide each other in advance, with a reasonable opportunity for review and comment, drafts of contemplated substantive communications with any Governmental Authority concerning the Offer, Merger or any of the other Transactions; and (iv) provide each other advance notice of all pre-arranged and non-ministerial meetings and conferences, or substantive discussions, with a Governmental Authority concerning the Merger or any of the other Transactions, and, unless prohibited by the Governmental Authority, permit one another to attend and participate therein either directly or through counsel. Subject to applicable Laws relating to the exchange of information, and subject to reasonable confidentiality considerations, limiting disclosure to outside counsel and consultants retained by such counsel, and subject to redaction or withholding of documents as necessary (A) to comply with contractual arrangements, (B) to remove references to valuation of the Company, and (C) to protect confidential and competitively sensitive information, Parent and the Company shall have the right to review reasonably in advance and, to the extent practicable, each will consult with the other on and consider in good faith the views of the other in connection with, any filing made with, or written materials submitted to, any third party and/or any Governmental Authority in connection with the Offer, Merger and the other Transactions. In exercising the foregoing rights, each of the Company and Parent shall act reasonably and as promptly as reasonably practicable and advisable. Nothing in this Agreement shall require the Parties to take or agree to take any action with respect to its business or operations unless the effectiveness of such agreement or action is conditioned upon Closing.

(b) Information. Subject to applicable Laws, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its respective Subsidiaries, directors, officers and stockholders and such other matters, in each case, as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of Parent, Merger Sub, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Authority in connection with the Offer and the Merger, and shall provide the other party with final copies of any filings made with a Governmental Authority.

(c) Status. Subject to applicable Laws and the instructions of any Governmental Authority, the Company and Parent each shall keep the other apprised of the status of matters relating to completion of the Offer and the Merger, including promptly furnishing the other with copies of filings, submissions, notices or other communications sent or received by Parent, Merger Sub, the Company or any of its Subsidiaries, as the case may be, to or from any third party and/or any Governmental Authority with respect to the Transactions. Neither the Company nor Parent shall permit any of its officers or any other Representatives to participate in any non-ministerial meeting or substantive discussion with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to the Transactions unless, to the extent legally permissible and reasonably practicable, (i) it consults with the other party in advance and

(ii) unless prohibited by such Governmental Authority, gives the other party the opportunity to attend and participate in such meeting or substantive discussion.

(d) Regulatory Matters. Subject to the terms and conditions set forth in this Agreement, without limiting the generality of the other undertakings pursuant to this Section 5.6, each of the Company and Parent agree to take or cause to be taken the following actions:

(i) the provision to each and every federal, state, local or foreign court or Governmental Authority of non-privileged information and documents requested by any Governmental Authority that is necessary for the consummation of the Transactions, as promptly as reasonably practicable and advisable;

(ii) the use of its reasonable best efforts to avoid the entry of any permanent, preliminary or temporary injunction or other order, decree, decision, determination or judgment that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the Transactions, including the (A) the defense through litigation on the merits of any claim asserted in any court, agency or other proceeding by any Governmental Authority, seeking to delay, restrain, prevent, enjoin or otherwise prohibit consummation of such transactions, and (B) the proffer and agreement by Parent and its Subsidiaries of their respective willingness to sell, lease, license or otherwise dispose of, or hold separate pending such disposition, and promptly to effect the sale, lease, license, disposal and holding separate of, and to accept such conditions, limitations, obligations, or other restraints upon the conduct or operation of, such assets, rights, product lines, licenses, categories of assets or businesses or other operations, or interests therein, of Parent, the Company or any of their respective Subsidiaries (and the entry into agreements with, and submission to orders of, the relevant Governmental Authority with jurisdiction over enforcement of any applicable Antitrust Laws ("***Government Antitrust Entity***") giving effect thereto) if such action should be necessary or advisable to avoid, prevent, eliminate or remove the actual, anticipated or threatened (x) commencement of any proceeding in any forum or (y) issuance of any order, decree, decision, determination, judgment or Law, in each case that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the Transactions by any Government Antitrust Entity (it being understood that no such action will be binding on the Company, Parent or any of their respective Subsidiaries or Affiliates unless it is contingent upon the occurrence of the Closing); provided, further, however, that nothing in this Agreement shall require Parent or Merger Sub to agree to provide prior notice to or seek affirmative approval from any Governmental Authority for any future acquisitions or to take or agree to any action of the types referred to in clauses (B) in this Section 6.4(d)(ii) if such action relates to any Affiliate of Parent (other than Company and the Company Subsidiaries); and

(iii) the prompt use of its reasonable best efforts to take, in the event that any permanent, preliminary or temporary injunction, decision, order, judgment, determination, decree or Law is entered, issued or enacted, or becomes reasonably foreseeable to be entered, issued or enacted, in any proceeding, review or inquiry of any kind that would make consummation of the Transactions in accordance with the terms of this Agreement unlawful or that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the Transactions, any and all steps (including, the appeal thereof, the

posting of a bond or the taking of the steps contemplated by clause (ii) of this paragraph (d)) necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate, avoid or remove such actual, anticipated or threatened injunction, decision, order, judgment, determination, decree or enactment so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement.

(e) Notwithstanding anything to the contrary set forth in this Agreement, neither the Company, any of the Company Subsidiaries, Parent nor any of its Affiliates will be required to agree to the payment of a consent fee, "profit sharing" payment or other consideration (including increased or accelerated payments) or the provision of additional security (including a guaranty), in connection with the Merger, including in connection with obtaining any consent pursuant to any Company Material Contract, in each case unless such payment, consideration or security is contingent upon the occurrence of the Closing.

(f) Without limiting in any respect Parent's obligations under this Section 6.4, Parent shall have the right to (i) direct, devise and implement the strategy for obtaining any necessary approval of, for responding to any request from, inquiry or investigation by (including directing the timing, nature and substance of all such responses), and shall have the right to lead all meetings and communications (including any negotiations) with, any Governmental Authority that has authority to enforce any Antitrust Law and (ii) without limiting the generality of clause (i) of this Section 6.4(f) or the obligations of the Company under this this Section 6.4, control the defense and settlement of any Legal Proceeding brought by or before any Governmental Authority that has authority to enforce any Antitrust Law. Parent shall consult with the Company in a reasonable manner and consider in good faith the views and comments of the Company in connection with the foregoing.

Section 6.5 Stock Exchange De-listing. Prior to the Closing Date, the Company shall cooperate with Parent and use reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable Laws and rules and policies of Nasdaq to enable the delisting by the Surviving Corporation of the Company Common Stock from Nasdaq and the deregistration of the Company Common Stock under the Exchange Act as promptly as practicable after the Effective Time. The Company shall cause the Company Common Stock to remain registered under the Exchange Act and listed for trading on the Nasdaq at all times prior to the Effective Time, including, for the avoidance of doubt, entering into one or more reverse stock split(s) in order to remain listed.

Section 6.6 Public Announcements. The initial press release regarding this Agreement shall be a joint press release in mutually agreed form. Thereafter, the Company and Parent each shall consult with the other prior to issuing any press releases or otherwise making public announcements with respect to the Merger and the Transactions, and to the extent practicable shall give each other a reasonable opportunity to review and comment on any such press release or announcement, except in all cases (a) as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service or by the request of any Governmental Authority, in which case the party required to issue such press release or announcement shall use reasonable best efforts to provide the other party with a reasonable opportunity to review and comment on any such press release or announcement, or (b) with respect to any communications by the Company in connection with a Change of

Recommendation effected pursuant to and in accordance with Section 6.3(e) (or, prior to a Change of Recommendation, the applicable event that may give rise to a Change of Recommendation), or by Parent in response thereto. Except as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service or by the request of any Governmental Authority, neither Parent nor Merger Sub shall issue any press release or other written public statement about the vitaCare Transaction without the Company's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed); provided, that Parent, Merger Sub and their respective Affiliates may (i) make disclosures (which are made subject to existing confidentiality obligations) to their respective investors or in connection with its fundraising activities and (ii) provide general information about the subject matter of this Agreement in connection with fundraising, marketing, informational or reporting activities of the kind customarily provided with respect to investments of this nature.

Section 6.7 Financing Arrangements.

(a) From the date of this Agreement until the Closing Date, the Company agrees to use reasonable best efforts to provide, and shall cause the Company Subsidiaries and its and their respective officers, directors and employees to use reasonable best efforts to provide, in each case at Parent's sole expense, such cooperation as may be reasonably requested by Parent in connection with the 11th Amendment and any other arrangement of any debt financing arranged by Parent in connection with the Transactions (the "***Debt Financing***"). Notwithstanding the foregoing, (A) such requested cooperation shall not (i) unreasonably disrupt or interfere with the operations of the Company or the Company Subsidiaries or (ii) cause competitive harm to the Company or the Company Subsidiaries if the transactions contemplated by this Agreement are not consummated, (B) nothing in this Section 6.7(a) shall require cooperation to the extent that it would (x) cause any condition to the Closing set forth in Article VII to not be satisfied or (y) cause any breach of this Agreement, (C) neither the Company nor any of the Company Subsidiaries shall be required to (1) pay any commitment or other similar fee prior to the Closing Date, (2) incur or assume any liability in connection with the Debt Financing or the Financing prior to the Closing Date that is not already in existence on the Agreement Date or (3) provide access to or disclose information where the Company determines that such access or disclosure would reasonably be likely to jeopardize the attorney-client privilege or contravene any applicable Law and (D) none of the Company, the Company Subsidiaries or their respective directors, officers or employees shall be required to execute, deliver or enter into, or perform any agreement, document or instrument with respect to any Debt Financing that is not already contemplated by the Financing Agreement as in effect on the Amendment Date that is not contingent upon the Closing.

(b) Prior to the Closing, the Company shall remain in compliance with its obligations under the Financing Agreement and shall not and shall cause the Company Subsidiaries to not take any actions or fail to take any actions that would reasonably be expected to result in a "Default" or an "Event of Default" (as such terms are defined in the Financing Agreement) under the Financing Agreement.

Section 6.8 Directors and Officers Exculpation, Indemnification and Insurance.

(a) Existing Agreements and Protections. The Surviving Corporation, its Subsidiaries and Parent shall honor and fulfill in all respects the indemnification, exculpation, and

advancement obligations of the Company and the Company Subsidiaries and any of their respective current or former directors and officers and any person who becomes a director or officer of the Company or any of the Company Subsidiaries prior to the Effective Time (the "***Indemnified Persons***") for acts or omissions occurring at or prior to the Effective Time, in each case as provided in the Company Charter Documents, the articles or certificate of incorporation and bylaws (or other similar organizational documents) of the Company Subsidiaries and any indemnification agreement between any Indemnified Person and the Company or any Company Subsidiary (in each case, as in effect on the Agreement Date and, in the case of any indemnification agreement, as set forth in Section 6.8(a) of the Company Disclosure Letter). In addition, commencing at the Effective Time and ending on the sixth (6th) anniversary of the Effective Time, the Surviving Corporation and its Subsidiaries shall (and Parent shall cause the Surviving Corporation and its Subsidiaries to) cause the articles or certificate of incorporation and bylaws (and other similar organizational documents) of the Surviving Corporation and its Company Subsidiaries to contain provisions with respect to indemnification, exculpation and the advancement of expenses with respect to acts or omissions prior to the Effective Time that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions set forth in the Company Charter Documents and the articles or certificate of incorporation and bylaws (or other similar organizational documents) of the Company Subsidiaries as of the Agreement Date, as applicable, and such provisions shall not be repealed, amended or otherwise modified (whether by operation of Law or otherwise) in any manner except as required by applicable Law.

(b) Indemnification. Without limiting the generality of the provisions of Section 6.8(a), during the period commencing at the Effective Time and ending on the sixth (6th) anniversary of the Effective Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) indemnify and hold harmless each Indemnified Person from and against any costs, fees and expenses (including, to the extent applicable, a duty to advance reasonable attorneys' fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, proceeding, investigation or inquiry, whether civil, criminal, administrative or investigative, to the extent such claim, proceeding, investigation or inquiry arises directly or indirectly out of or pertains directly or indirectly to (i) any action or omission or alleged action or omission in such Indemnified Person's capacity as a director, officer, employee or agent of the Company or any of the Company Subsidiaries or other Affiliates that occurred prior to or at the Effective Time or (ii) any of the Transactions; provided, however, that if, at any time prior to the sixth (6th) anniversary of the Effective Time, any Indemnified Person delivers to Parent a written notice asserting a claim for indemnification or advancement under this Section 6.8(b), then the claim asserted in such notice shall survive the sixth (6th) anniversary of the Effective Time until such time as such claim is fully and finally resolved. In the event of any such claim, the Surviving Corporation shall pay all and/or advance reasonable fees and expenses of any counsel retained by an Indemnified Person promptly after statements therefor are received. No Indemnified Person shall be liable for any settlement effected without his or her prior express written consent.

(c) Insurance. The Company currently maintains a directors' and officers' liability insurance policy ("***D&O Insurance***"), an accurate and complete summary of which has been made available by the Company to Parent or Parent's Representatives prior to the Agreement Date. Prior to the Effective Time, notwithstanding anything to the contrary set forth in this Agreement, the Company shall purchase a six-year "tail" prepaid policy on the D&O Insurance

for the benefit of the Indemnified Persons who are currently covered by such D&O Insurance with respect to their acts and omissions occurring prior to the Effective Time in their capacities as directors and officers of the Company (as applicable), on terms with respect to coverage, deductibles and amounts no less favorable than the D&O Insurance; provided, that in no event shall the Company or the Surviving Corporation be required to expend in any one year an amount in excess of 300% of the annual premium currently payable by the Company with respect to the D&O Insurance, *it being understood* that if the annual premiums payable for such insurance coverage exceeds such amount, Parent shall be obligated to cause the Surviving Corporation to obtain a policy with the greatest coverage available for a cost equal to such amount. The Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) maintain such "tail" policy in full force and effect and continue to honor their respective obligations thereunder.

(d) Successors and Assigns. If the Surviving Corporation (or Parent) or any of its successors or assigns shall (i) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation shall assume all of the obligations of the Surviving Corporation (or Parent) set forth in this Section 6.8.

(e) No Impairment; Third Party Beneficiaries. The obligations set forth in this Section 6.8 shall not be terminated, amended or otherwise modified in any manner that adversely affects any Indemnified Person (or any other person who is a beneficiary under the D&O Insurance or the "tail" policy referred to in Section 6.8(c) (and their heirs and representatives)) without the prior written consent of such affected Indemnified Person or other person who is a beneficiary under the D&O Insurance or the "tail" policy referred to in Section 6.8(c) (and their heirs and representatives). Each of the Indemnified Persons or other persons who are beneficiaries under the D&O Insurance or the "tail" policy referred to in Section 6.8(c) (and their heirs and representatives) are intended to be third party beneficiaries of this Section 6.8, with full rights of enforcement as if a party thereto. The rights of the Indemnified Persons (and other persons who are beneficiaries under the D&O Insurance or the "tail" policy referred to in Section 6.8(c) (and their heirs and representatives)) under this Section 6.8 shall be in addition to, and not in substitution for, any other rights that such persons may have under the articles or certificate of incorporation, bylaws or other equivalent organizational documents, any and all indemnification agreements of or entered into by the Company or any of the Company Subsidiaries, or applicable Law (whether at law or in equity).

(f) Joint and Several Obligations. The obligations and liability of the Surviving Corporation, Parent and their respective Subsidiaries under this Section 6.8 shall be joint and several.

(g) Preservation of Other Rights. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or any of the Company Subsidiaries for any of their respective directors, officers or other employees,

it being understood and agreed that the indemnification provided for in this Section 6.8 is not prior to or in substitution for any such claims under such policies.

Section 6.9 Transaction Litigation. Prior to the earlier of the Effective Time or the date of termination of this Agreement pursuant to Section 8.1, the Company shall promptly notify Parent of all Legal Proceedings commenced or, to the Knowledge of the Company, threatened against the Company or any of the Company Subsidiaries or any of their respective directors or officers, in each case in connection with, arising from or otherwise relating to the Offer, the Merger or any of the other Transactions ("***Transaction Litigation***") (including by providing copies of all pleadings and other material documents with respect thereto) and thereafter keep Parent reasonably informed with respect to the status thereof. The Company shall (a) give Parent reasonable opportunity (at Parent's sole expense and subject to a customary joint defense agreement) to participate in the defense, settlement or prosecution of any Transaction Litigation; and (b) consult with Parent with respect to the defense, settlement and prosecution of any Transaction Litigation. Further, the Company may not compromise, settle or come to an arrangement regarding, or propose or agree to compromise, settle or come to an arrangement regarding, any Transaction Litigation unless Parent has consented thereto in writing (which consent will not be unreasonably withheld, conditioned or delayed). For purposes of this Section 6.9, "participate" means that Parent will be kept reasonably apprised of proposed strategy and other significant decisions with respect to the avoidance of doubt, Parent's right to "participate" in the defense and prosecution of any Transaction Litigation by the Company (to the extent that the attorney client privilege between the Company and its counsel is not undermined or otherwise affected), and Parent may offer comments or suggestions with respect to such Transaction Litigation, but will not be afforded any decision-making power or other authority over such Transaction Litigation except for the settlement or compromise consent set forth above.

Section 6.10 Rule 16b-3. The Company shall take all such steps as may be required to cause the Transactions, and any other dispositions of equity securities (including derivative securities) of the Company resulting from the Transactions by each individual who is or will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 6.11 Employee Matters.

(a) For purposes of this Section 6.11, (i) the term "***Covered Employees***" means employees who are employed by the Company or any Company Subsidiary as of immediately prior to the Effective Time; and (ii) the term "***Continuation Period***" means the period beginning at the Effective Time and ending on the first anniversary of the Effective Time (or, if earlier, the termination date of the relevant Covered Employee).

(b) During the Continuation Period, Parent shall, or shall cause the Surviving Corporation or any Company Subsidiary to, provide to each Covered Employee for so long as such Covered Employee remains employed by Parent, the Surviving Corporation or any Company Subsidiary during the Continuation Period, (i) a base salary (or base wages, as the case may be), annual short-term cash bonus opportunities and commissions) that are, in the aggregate, no less favorable to the base salary (or base wages), annual cash bonus opportunities and commissions (excluding any equity or equity-based compensation) provided to such Covered Employee immediately prior to the Effective Time and (ii) employee benefits that are, in the aggregate, substantially comparable to the employee benefits provided to such Continuing Employees pursuant to the Company Plans set forth on Section 4.9(a) of the Company Disclosure Letter (excluding, any defined benefit pension plan, retiree medical benefits, equity or equity-based compensation, retention bonuses or change of control bonuses or benefits) provided to such Covered Employee immediately prior to the Effective Time).

(c) In the event any Covered Employee first becomes eligible to participate under any employee benefit plan, program, policy, or arrangement of Parent or the Surviving Corporation or any of their respective Subsidiaries ("***Parent Employee Benefit Plan***") following the Effective Time or during the calendar year including the Effective Time, Parent shall, or shall cause the Surviving Corporation to, use commercially reasonable efforts to: (i) for the plan year in which the Effective Time occurs waive any preexisting condition exclusions and waiting periods with respect to participation and coverage requirements applicable to any Covered Employee under any Parent Employee Benefit Plan providing medical, dental, or vision benefits to the same extent such limitation was waived or satisfied under the analogous Company Plan the Covered Employee participated in immediately prior to coverage under the Parent Employee Benefit Plan and (ii) for the plan year in which the Effective Time occurs provide each Covered Employee with credit for any copayments and deductibles paid prior to the Covered Employee's coverage under any Parent Employee Benefit Plan during the calendar year in which such amount was paid, to the same extent such credit was given under the analogous Company Plan in which the Covered Employee participated immediately prior to coverage under the Parent Employee Benefit Plan, in satisfying any applicable deductible or out-of-pocket requirements under the Parent Employee Benefit Plan.

(d) As of the Effective Time, Parent shall cause the Surviving Corporation and their respective Subsidiaries to recognize, each Covered Employee's service earned prior to the Effective Time with the Company (or any predecessor entities of the Company or any of the Company Subsidiaries) for purposes of vesting in any defined contribution retirement plan and eligibility to participate purposes (but not for benefit accrual purposes under any defined benefit pension plan, retiree medical benefits or any equity or equity-based compensation plan, as applicable) to the same extent and for the same purposes as such Covered Employee was entitled, before the Effective Time, to credit for such service under any similar Company Plan in which such Covered Employee participated immediately prior to the Effective Time. In no event shall anything contained in this Section 6.11(d) result in any duplication of benefits for the same period of service.

(e) Without limiting the generality of Section 9.4, nothing in this Section 6.11 shall (i) be construed to limit the right of Parent, the Company, or any of the Company Subsidiaries (including, following the Effective Time, the Surviving Corporation) to amend or terminate any Company Plan or other benefit or compensation plan, program, policy, agreement, Contract or arrangement, (ii) be construed as the adoption, establishment, amendment, modification or termination of any Company Plan, Parent Employee Benefit Plan or other benefit or compensation plan, program, policy, Contract, agreement or arrangement, (iii) be construed to require Parent, the Company, or any of the Company Subsidiaries (including, following the Effective Time, the Surviving Corporation) to retain the employment of any particular Person for any fixed period of time following the Effective Time or (iv) create any third-party beneficiary or other right in any other Person, including any current or former director, officer, employee or other service provider or any participant in any Company Plan, Parent Employee Benefit Plan or other benefit or compensation plan, program, policy, arrangement, Contract or agreement, including any Covered Employee or dependent or beneficiary thereof.

Section 6.12 FIRPTA Certificate. At the Closing, the Company shall deliver to Parent a certification that the Company is not and has not been a United States real property holding corporation, dated as of the Closing Date and in form and substance required under Treasury Regulation Section 1.897-2(h); provided that if Parent does not receive such certification Parent's sole remedy shall be to withhold in accordance with Section 2.9.

Section 6.13 Confidentiality. The parties hereto acknowledge that Essex Woodlands Services Co., Inc., an Affiliate of Parent and the Company have previously executed a nondisclosure agreement, dated as of January 21, 2022 (the "***Confidentiality Agreement***"), which Confidentiality Agreement shall continue in full force and effect in accordance with its terms.

Section 6.14 Obligations of Merger Sub. Parent shall take all action necessary to cause Merger Sub and, after the Closing, the Surviving Corporation to perform their respective obligations under this Agreement and to consummate the Offer, the Merger and the Transactions upon the terms and subject to the conditions set forth in this Agreement. Parent and Merger Sub will be jointly and severally liable for the failure by either of them to perform and discharge any of their respective covenants, agreements and obligations pursuant to and in accordance with this Agreement.

Section 6.15 Parent Vote. Immediately following the execution and delivery of this Agreement, Parent will or will cause the sole stockholder of Merger Sub, to execute and deliver to Merger Sub and the Company a written consent approving the Merger in accordance with applicable Law.

Section 6.16 Takeover Statutes. If any Takeover Provision or other "takeover" law is or may become applicable to the Offer, the Merger or the other Transactions, the Company and the Company Board shall grant such approvals and take such actions (including amending the Company's bylaws) as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such Takeover Provision or such statute or regulation on such transactions.

Section 6.17 Notification of Certain Matters. Unless prohibited by applicable Law, Parent and the Company shall each promptly notify the other party upon receiving notice of any event, effect, occurrence, fact, circumstance, condition or change that would reasonably be expected to give rise to a failure of a condition precedent in Article VII; provided, however, that the failure to make any such notification (in and of itself) shall not be taken into account in determining whether the conditions set forth in Article VII have been satisfied or give rise to any right of termination to any party hereto under Article VIII.

Section 6.18 Merger Without a Stockholders' Meeting. As promptly as practicable following the consummation of the Offer, the Parties shall take all necessary and appropriate actions to cause the Merger to become effective without a meeting of the stockholders of the Company, in accordance with NRS 92A.133 and the other applicable provisions of the NRS.

## ARTICLE VII
## CONDITIONS TO MERGER

Section 7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction (or waiver by Parent and the Company, to the extent permitted by applicable Law) of each of the following conditions at or prior to the Closing:

(a) No Legal Prohibition. No Governmental Authority of competent jurisdiction shall have announced, enacted, issued, promulgated, entered, enforced or deemed applicable to the Merger any applicable Law, or issued or granted any Order (whether temporary, preliminary or permanent) (any such Law or Order, a "***Legal Restraint***"), that is in effect and that has the effect of making the consummation of the Merger illegal or which has the effect of prohibiting, enjoining, preventing or restraining the consummation of the Merger.

(b) The Offer. Merger Sub (or Parent on Merger Sub's behalf) shall have accepted for payment for all of the Shares validly tendered and not validly withdrawn pursuant to the Offer; provided, however, that neither Merger Sub nor Parent shall be entitled to assert the failure of this condition if, in breach of this Agreement, Merger Sub fails to purchase any Shares validly tendered and not validly withdrawn pursuant to the Offer.

(c) No Default. As of immediately prior to the Closing, there shall be no "Default" or "Event of Default" (as such terms are defined in the Financing Agreement) that has occurred and is continuing to occur under the Financing Agreement.

**ARTICLE VIII**
**TERMINATION**

Section 8.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Offer Closing (except as provided herein), only as follows:

(a) by mutual written agreement of Parent and the Company; or

(b) by either Parent or the Company if the Offer Closing shall not have occurred on or before 11:59 p.m. Eastern Time on July 13, 2022 (the "***Termination Date***"); provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(b) shall not be available to any party hereto whose failure to perform or comply with any obligation under this Agreement has been the principal cause of, or resulted in, the failure of the Offer Closing to have occurred on or before the Termination Date; or

(c) by the Company, if (i) Merger Sub fails to commence (within the meaning of Rule 14d-2 under the Exchange Act) or extend the Offer in violation of Section 1.01 (other than due to a violation or breach by the Company of any provision of this Agreement that has been the principal cause of, or resulted in, such failure to commence the Offer or extend the Offer) or (ii) if the Expiration Time shall have occurred and Merger Sub shall not have accepted for payment, within three (3) Business Days following the Expiration Date, the shares of Company Common Stock validly tendered (and not validly withdrawn) pursuant to the Offer in accordance with the terms of this Agreement; provided, that the right to terminate this Agreement shall not be available to the Company if its breach of any representation, warranty, covenant or agreement set forth in this Agreement has been the principal cause of, or resulted in, Merger Sub having failed to accept for payment the shares of Company Common Stock validly tendered (and not validly withdrawn) pursuant to the Offer in accordance with the terms of this Agreement; or

(d) by either Parent or the Company if any Legal Restraint permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(d) shall not be available to any party hereto whose breach any representation, warranty, covenant or agreement set forth in this Agreement has been the principal cause of, or resulted in, such Legal Restraint; or

(e) by the Company in the event (i) of a breach of any covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement or (ii) that any of the representations and warranties of Parent and Merger Sub set forth in this Agreement (without regard to any qualifications or exceptions contained therein as to materiality) shall have been inaccurate when made or shall have become inaccurate, in either case such that such breach or inaccuracy (x) (i) would reasonably be expected to prevent or materially delay the Offer or the Merger and (y) (i) is not reasonably capable of being cured by Parent or Merger Sub by the Termination Date or (y)(ii) if reasonably capable of being cured by Parent or Merger Sub by the Termination Date, the Company has delivered to Parent written notice of such breach or inaccuracy and such breach or inaccuracy is not cured by Parent or Merger Sub, as applicable, by the earlier of (A) the Termination Date and (B) the date that is thirty (30) days after delivery of such notice; provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(e) shall not be

available to the Company if it is in breach of any representation, warranty, covenant or agreement set forth in this Agreement such that Parent would be entitled to terminate this Agreement pursuant to Section 8.1(g); or

(f) by the Company, prior to the Offer Acceptance Time, if (i) the Company Board authorizes the Company, subject to complying in all material respects with the terms of Section 6.3(e), to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal; and (ii) the Company pays to Parent the Company Termination Fee in accordance with Section 8.4(a) prior to or substantially concurrently with such termination; or

(g) by Parent in the event (i) of a breach of any covenant or agreement on the part of the Company set forth in this Agreement or (ii) that any of the representations and warranties of the Company set forth in this Agreement shall have been inaccurate when made or shall have become inaccurate, in either case such that the conditions set forth in Sections (c)(i), (c)(ii) or (c)(iii) of Annex A, as applicable, would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate, as applicable (x) (i) is not reasonably capable of being cured by the Company by the Termination Date or (x)(ii) if reasonably capable of being cured by the Company by the Termination Date, Parent has delivered to the Company written notice of such breach and such breach is not cured by the Company by the earlier of (A) the Termination Date and (B) the date that is thirty (30) days after delivery of such notice; provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(g) shall not be available to Parent if it is in breach of any representation, warranty, covenant or agreement set forth in this Agreement such that the Company would be entitled to terminate this Agreement pursuant to Section 8.1(e); or

(h) by Parent in the event that, a Change of Recommendation shall have occurred; or

(i) by Parent in the event of a Willful Breach of any covenant or agreement on the part of the Company set forth in Section 6.3.

Section 8.2 Notice of Termination. A party terminating this Agreement pursuant to Section 8.1 (other than Section 8.1(a)) shall deliver a written notice to the other party setting forth specific basis for such termination and the specific provision of Section 8.1 pursuant to which this Agreement is being terminated. A valid termination of this Agreement pursuant to Section 8.1 (other than Section 8.1(a)) shall be effective upon receipt by the non-terminating party of the foregoing written notice, validly given.

Section 8.3 Effect of Termination. In the event of a valid termination of this Agreement pursuant to Section 8.1, this Agreement shall be of no further force or effect without liability of any party or parties hereto, as applicable (or any former, current or future stockholder, equityholder, Affiliate, director, manager, officer, employee, agent, consultant or other Representative of such party or parties) to the other party or parties hereto, as applicable, except (a) for the terms of Section 6.4(c), Section 6.6, Section 6.12, this Section 8.3, Section 8.4 and Article IX, each of which shall survive the termination of this Agreement, (b) that nothing herein shall relieve any party or parties hereto, as applicable, from liability for any Fraud committed in connection with this Agreement or any of Transactions and (c) that nothing herein shall relieve

any party or parties hereto, as applicable, from liability for Willful Breach in connection with this Agreement or any of the Transactions. In addition to the foregoing, no termination of this Agreement shall affect the obligations of the parties hereto set forth in the Confidentiality Agreement, all of which shall survive termination of this Agreement in accordance with their respective terms and remain fully enforceable in accordance with their respective terms. For purposes of this Agreement, "***Willful Breach***" means a material breach that is a consequence of an intentional act or intentional failure to act undertaken by the breaching party with the actual knowledge that the taking of or the omission of taking such act would, or would reasonably be expected to, cause or constitute a material breach of this Agreement. Notwithstanding anything to the contrary in this Agreement, and except in the case of Fraud by Parent or Merger Sub, the maximum aggregate liability for Parent or any of its Affiliates or any of their Representatives may be liable in connection with the termination of this Agreement shall not exceed a maximum of $5,110,000.

Section 8.4 Company Termination Fees.

(a) In the event that this Agreement is terminated pursuant to Section 8.1(f), then as a condition to such termination of this Agreement, prior to or concurrently with such termination, the Company shall pay to Parent (or its designee) the Company Termination Fee by wire transfer of immediately available funds to an account or accounts designated in writing by Parent. "***Company Termination Fee***" means an amount equal to $3,250,000.

(b) In the event that this Agreement is terminated pursuant to (i) Section 8.1(h), Section 8.1(g) or Section 8.1(i) (ii) Section 8.1(b) and at the time Parent could have terminated this Agreement pursuant to Section 8.1(h), Section 8.1(g) or Section 8.1(i), then within two (2) Business Days after the termination of this Agreement, the Company shall pay to Parent (or its designee) the Company Termination Fee by wire transfer of immediately available funds to an account or accounts designated in writing by Parent.

(c) In the event that:

(i) this Agreement is terminated by either (A) Parent pursuant to Section 8.1(b) or (B) the Company pursuant to Section 8.1(b) and at the time Parent could not have terminated pursuant to Section 8.1(b) (each, an "***Applicable Termination***");

(ii) following the execution and delivery of this Agreement and prior to an Applicable Termination, an Acquisition Proposal has been publicly announced or disclosed; and

(iii) within twelve (12) months of an Applicable Termination, the Company shall have entered into an Alternative Acquisition Agreement with respect to any Acquisition Proposal or an Acquisition Transaction is consummated; provided, that for purposes of this Section 8.4(c)(iii), all references to "15%" in the definition of "Acquisition Proposal" shall be deemed to reference "50%";

then the Company will, prior to or concurrently with the earlier of the execution of such Alternative Acquisition Agreement and the consummation of such Acquisition Transaction,

pay to Parent (or its designee) the Company Termination Fee by wire transfer of immediately available funds to an account or accounts designated in writing by Parent

(d) The parties hereto acknowledge and hereby agree that in no event shall the Company be required to pay the Company Termination Fee on more than one occasion, whether or not the Company Termination Fee may be payable under more than one provision of this Agreement at the same or at different times and the occurrence of different events.

(e) Recovery. Parent, Merger Sub and the Company hereby acknowledge and agree that the covenants set forth in this Section 8.4 are an integral part of this Agreement and the Merger, and that, without these agreements, Parent, Merger Sub and the Company would not have entered into this Agreement. Accordingly, if the Company fails to promptly pay any amounts due pursuant to Section 8.4 and, in order to obtain such payment, Parent commences a Legal Proceeding that results in a judgment against the Company for the amount set forth in Section 8.4 or any portion thereof, the Company will pay to Parent its out-of-pocket costs and expenses (including reasonable attorneys' and experts' fees and costs) in connection with such Legal Proceeding, together with interest on such amount or portion thereof at the annual rate equal to the prime rate as published in The Wall Street Journal in effect on the date that such payment or portion thereof was required to be made plus 1% through the date that such payment or portion thereof was actually received, or a lesser rate that is the maximum permitted by applicable Law.

(f) Acknowledgement. Each of the parties acknowledges and agrees that the damages resulting from termination of this Agreement under circumstances where a Company Termination Fee is payable are uncertain and incapable of accurate calculation and therefore, the amounts payable pursuant to Section 8.4 are not a penalty but rather constitute liquidated damages in a reasonable amount that will compensate Parent for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions and shall be (together with all interest as described in Section 8.4(e)) the sole monetary remedy of Parent in the event of a termination of this Agreement where the Company Termination Fee is payable by the Company pursuant to Section 8.4 and the Company Termination Fee is actually paid to Parent.

## ARTICLE IX
## MISCELLANEOUS PROVISIONS

Section 9.1 Amendment or Supplement. This Agreement may be amended, modified and supplemented in any and all respects any time prior to the Effective Time with respect to any of the terms of this Agreement; provided, however, that (a) no such amendment, modification or supplement shall result in the per share Common Stock Merger Consideration not being the same amount and kind of cash, property, rights or securities as the consideration being offered to holders of Shares in the Offer, (b) after the Offer Closing, no such amendment, modification or supplement shall adversely affect the rights of the Company Stockholders (other than Parent, Purchaser or their respective Affiliates) under this Agreement without the approval of such Company Stockholders and (c) no amendment shall be made to this Agreement after the Effective Time. Any such amendment, modification or supplement shall be effective only if it is set forth in an instrument in writing executed by each Party.

Section 9.2 Extension of Time, Waiver, etc. At any time prior to the Offer Closing, any party may, subject to applicable Law: (a) waive any inaccuracies in the representations and warranties of any other party hereto; (b) extend the time for the performance of any of the obligations or acts of any other party hereto; or (c) to the extent permitted by applicable Law, waive compliance by the other party with any of the agreements contained in this Agreement. Notwithstanding the foregoing, no failure or delay by the Company, Merger Sub or Parent in exercising any right hereunder shall operate as a waiver of rights, nor shall any single or partial exercise of such rights preclude any other or further exercise of such rights or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 9.3 No Survival. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing. This Section 9.3 shall not limit the survival of any covenant or agreement of the parties hereto contained in this Agreement which by its terms contemplates performance in whole or in part after the Closing.

Section 9.4 Entire Agreement; No Third Party Beneficiary.

(a) This Agreement, including the exhibits hereto, the Company Disclosure Letter and the documents and instruments relating to the Offer and the Merger referred to in this Agreement, constitutes, together with the Confidentiality Agreement, the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter of this Agreement, provided, however, the Confidentiality Agreement shall not be superseded, shall survive any termination of this Agreement and shall continue in full force and effect until the earlier to occur of (i) the Effective Time; and (ii) the date on which the Confidentiality Agreement is terminated in accordance with its terms.

(b) EACH PARTY HERETO AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT OR IN ANY CERTIFICATE DELIVERED IN CONNECTION WITH THE CONSUMMATION OF THE MERGER, NEITHER PARENT AND MERGER SUB, ON THE ONE HAND, NOR THE COMPANY, ON THE OTHER HAND, MAKES ANY REPRESENTATIONS OR WARRANTIES, AND EACH PARTY HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED), AS TO THE ACCURACY OR COMPLETENESS OF ANY OTHER INFORMATION MADE AVAILABLE WITH RESPECT TO, OR IN CONNECTION WITH, THE NEGOTIATION, EXECUTION OR DELIVERY OF THIS AGREEMENT OR THE TRANSACTIONS, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO THE OTHER OR THE OTHER'S REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION WITH RESPECT TO ANY ONE OR MORE OF THE FOREGOING.

(c) This Agreement is not intended, and shall not be deemed, to create any agreement of employment with any person, to confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns or to otherwise create any third-party beneficiary hereto, except (i) with respect to the Indemnified Persons who are express third party beneficiaries of Section 6.8, (ii) after the Offer Closing, for Section 1.1(b), which is intended to be for the benefit of, and shall be enforceable by, each holder of Shares that

validly tendered their Shares of Company Common Stock in the Offer, which holders are express third-party beneficiaries of Section 1.1 from and after the Offer Closing, (ii) after the Effective Time, which is intended to be for the benefit of, and shall be enforceable by, each holder of Company Common Stock to receive the Merger Consideration payable in accordance with Section 2.3, which holders are express third-party beneficiaries of Section 2.3, and (iii) after the Effective Time, for Section 2.5, which is intended to be for the benefit of, and shall be enforceable by, each holder an Company Option, Company RSU or Company PSU, as applicable, which holders are express third party beneficiaries of Section 2.5.

Section 9.5 Applicable Law; Jurisdiction.

(a) THIS AGREEMENT, AND ANY CLAIM, CAUSE OF ACTION OR LEGAL PROCEEDING (WHETHER AT LAW, IN CONTRACT OR IN TORT) THAT MAY BE BASED UPON, RELATED TO OR ARISE OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS, OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREUNDER) SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE CONFLICTS OF LAW PRINCIPLES; PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING, THE LAWS OF THE STATE OF NEVADA (REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE CONFLICTS OF LAW PRINCIPLES) SHALL GOVERN (I) THE MERGER (INCLUDING THE CONSUMMATION AND EFFECTS THEREOF) TO THE EXTENT THE APPLICATION OF NEVADA LAW IS REQUIRED AND (II) THE FIDUCIARY OBLIGATIONS AND/OR OF THE COMPANY BOARD OR OF THE OFFICERS, EMPLOYEES OR AGENTS OF THE COMPANY. The parties hereto hereby irrevocably submit to the personal jurisdiction of the Court of Chancery of the State of Delaware or, if such Court of Chancery shall lack subject matter jurisdiction, the federal of the United States of America or state court located in the County of New Castle, Delaware, solely in respect of the interpretation and enforcement of the provisions of (and any claim or cause of action arising under or relating to) this Agreement and of the documents referred to in this Agreement, and in respect of the Transactions, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims relating to such action, suit or proceedings shall be heard and determined in such courts. The parties hereto hereby consent to and grant any such court jurisdiction over the person of such parties and, to the extent permitted by Law, over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 9.8 or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT SUCH PARTY MAY HAVE TO A

TRIAL BY JURY IN RESPECT OF ANY ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS. EACH PARTY HEREBY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 9.5.

Section 9.6 Specific Performance.

(a) The parties hereto agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy would occur in the event that the parties hereto do not perform the provisions of this Agreement (including any party hereto failing to take such actions as are required of it hereunder in order to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. The parties hereto acknowledge and agree that, subject to Section 8.4, (A) the parties hereto will be entitled, in addition to any other remedy to which they are entitled at law or in equity, to an injunction, specific performance and other equitable relief to prevent breaches (or threatened breaches) of this Agreement and to enforce specifically the terms and provisions hereof, including the right of a party to cause each other party to consummate the Offer, the Merger and the other transactions contemplated by this Agreement, in any court specified in Section 9.5(a); (B) the provisions of Section 8.4 are not intended to and do not adequately compensate Parent and Merger Sub for the harm that would result from a breach of this Agreement, and will not be construed to diminish or otherwise impair in any respect any party's right to an injunction, specific performance and other equitable relief; and (C) the right of specific enforcement is an integral part of the Transactions and without that right, neither the Company nor Parent would have entered into this Agreement.

(b) The parties hereto hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by any party hereto, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of any party under this Agreement. Any party hereto seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement will not be required to provide any bond or other security in connection with such injunction or enforcement, and each party hereto irrevocably waives any right that it may have to require the obtaining, furnishing or posting of any such bond or other security. The parties hereto further agree that (i) by seeking the remedies provided for in this Section 9.6, a party hereto shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement in the event that this Agreement has been terminated or in the event that the remedies provided for in this Section 9.6 are not available or otherwise are not granted, and (ii) nothing set forth in this Section 9.6 shall require any party hereto to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 9.6 prior or as a condition to exercising

any termination right under Article VIII (and pursuing damages after such termination), nor shall the commencement of any legal proceeding pursuant to this Section 9.6 or anything set forth in this Section 9.6 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Article VIII or pursue any other remedies under this Agreement that may be available then or thereafter. It is explicitly agreed that, the Company shall have the right to an injunction, specific performance, or other equitable remedies in connection with enforcing Parent's and Merger Sub's obligations to consummate the Offer (including, subject to the satisfaction (or to the extent waivable, waiver by Parent (on behalf of Merger Sub)) of the Offer Conditions, Merger sub's obligation to accept payment, and pay for, shares of Company Common Stock tendered in the Offer and the Merger, and the Parent's obligation under this Agreement to cause the Financing to be funded, including by exercising its rights in accordance with the Equity Commitment Letter, subject to the terms and conditions set forth therein and herein.

Section 9.7 [Reserved].

Section 9.8 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other parties hereto, and any attempt to make any such assignment without such consent shall be null and void, except that each of Parent and Merger Sub may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to any Affiliate or Parent or one or more direct or indirect wholly owned Subsidiaries of Parent without the consent of the Company, but no such assignment shall relieve Parent or Merger Sub of any of its obligations under this Agreement. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

Section 9.9 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with proof of delivery), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) If sent by email, on the date sent by e-mail if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (d) when received by the addressee if sent by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.9):

**if to Merger Sub or Parent:**

c/o EW Healthcare Partners
Berkeley Square House, Berkeley Square
London, UK W1J 6BR
Email: evis.hursever@ewhealthcare.com
Attention: Evis Hursever

**with a copy to (which copy shall not constitute notice):**

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Marshall P. Shaffer, P.C.; Michael Amalfe
Email: **[***]; [***]**

**if to the Company:**

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, FL 33431
Email: **[***]**
Attention: Marlan D. Walker, General Counsel

**with a copy to (which copy shall not constitute notice):**

DLA Piper LLP (US)
200 South Biscayne Boulevard, Suite 2500
Miami, FL 33131-5341
Attention: Joshua Samek
E-mail: **[***]**

and

845 Texas Avenue, Suite 3800
Houston, TX 77002-5005
Attention: J.A. Glaccum
E-mail: **[***]**

Section 9.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

Section 9.11 Fees and Expenses. Except as expressly provided for in this Agreement, including Section 1.2(a) and Section 6.4(a), all fees and expenses shall be paid by the Party incurring such fees or expenses, whether or not the Merger is consummated.

Section 9.12 Construction.

(a) For purposes of this Agreement, whenever the context requires: (i) the singular number shall include the plural, and vice versa; (ii) the masculine gender shall include the feminine and neuter genders; (iii) the feminine gender shall include the masculine and neuter genders; and (iv) the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, (i) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation”, (ii) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”, (iii) the word “or” shall not be exclusive, (iv) the word “will” shall be construed to have the same meaning as the word “shall” and (v) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof.

(d) Except as otherwise indicated, all references in this Agreement to “Sections” and “Exhibits” are intended to refer to Sections of this Agreement and Exhibits to this Agreement. The headings contained in this Agreement and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(e) The phrases “made available to”, “provided to,” “furnished to,” by the Company, and phrases of similar import when used in this Agreement, unless the context otherwise requires, means that a copy of the information or material referred to (i) has been provided by the Company to Parent, including by means of being provided for review in the Electronic Data Room, in connection with this Agreement (ii) has been filed by the Company in the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) Database for the SEC, in each case, as of 5 p.m. ET on the day immediately prior to the date hereof.

(f) When calculating the period of time before which, within which or after which any act is to be done or step taken pursuant to this Agreement, (i) the date that is the reference date in calculating such period shall be excluded and (ii) if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day. All references in this Agreement to a number of days are to such number of calendar days unless Business Days are specified.

(g) Unless otherwise specifically indicated, any reference in this Agreement to $ means U.S. dollars.

(h) The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

(i) References to a person are also to is permitted successors and assigns.

(j) References to any Law shall be deemed to refer to such Law as amended from time to time and to any rules or regulations promulgated thereunder

(k) When used herein, references to “ordinary course” or “ordinary course of business” will be construed to mean “ordinary course of business, consistent with past practices.”

Section 9.13 Counterparts; Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**ATHENE PARENT, INC.**

By: /s/ Scott Barry
Name: Scott Barry
Title: Co-President

**ATHENE MERGER SUB, INC.**

By: /s/ Scott Barry
Name: Scott Barry
Title: Co-President

**THERAPEUTICSMD, INC.**

By: /s/ Hugh O'Dowd
Name: Hugh O'Dowd
Title: Chief Executive Officer

**EXHIBIT A**
**DEFINITIONS**

**1.1 Cross Reference Table**. The following terms defined elsewhere in this Agreement in the Sections set forth below will have the respective meanings therein defined.

| **Terms** | **Definition** |
|---|---|
| Acceptable Confidentiality Agreement | Section 6.3(b) |
| Acceptance Time | Section 1.1(b) |
| Agreement Date | Preamble |
| Agreement | Preamble |
| Alternative Acquisition Agreement | Section 6.3(a)(iv) |
| Applicable Termination | Section 8.4(c)(i) |
| Balance Sheet | Section 4.5(c) |
| Capitalization Date | Section 4.2(a) |
| Capitalization Representations | Annex A |
| CBAs | Section 4.15 |
| Certificates | Section 2.3(a) |
| Change of Recommendation | Section 6.3(d)(i) |
| Closing Date | Section 2.1(b) |
| Closing | Section 2.1(b) |
| Common Stock Merger Consideration | Section 2.2(a) |
| Company | Preamble |
| Company Board | Recitals |
| Company Board Recommendation | Section 4.3(b) |
| Company Charter Documents | Section 4.1 |
| Company Disclosure Letter | Article IV |
| Company Financial Advisor | Section 4.8 |
| Company Material Contract | Section 4.17(a) |
| Company Preferred Stock | Section 4.2(a) |
| Company PSU Merger Consideration | Section 2.5(c) |
| Company Registered Intellectual Property | Section 4.14(a) |
| Company RSU Merger Consideration | Section 2.5(b)) |
| Company SEC Reports | Section 4.5(a) |
| Company Subsidiaries | Section 4.1 |
| Company Termination Fee | Section 8.4(a) |
| Confidentiality Agreement | Section 6.13 |
| Continuation Period | Section 6.11(a) |
| Covered Employees | Section 6.11(a) |
| D&O Insurance | Section 6.8(c) |
| Debt Financing | Section 6.7(a) |
| Determination Notice | Section 6.3(e)(ii) |
| Effective Time | Section 2.1(c) |
| Equity Interests | Section 4.2(b) |
| Exchange Agent | Section 2.3(a) |
| Exchange Fund | Section 2.3(a) |
| Expiration Date | Section 1.1(d) |

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| Fundamental Representations | Annex A |
| Government Antitrust Entity | Section 6.4(d)(ii) |
| Indemnified Persons | Section 6.8(a) |
| Initial Expiration Date | Section 1.1(d) |
| Insurance Policies | Section 4.16 |
| Interim Period | Section 6.1 |
| Leased Real Property | Section 4.18(b) |
| Legal Restraint | Section 7.1(b) |
| Merger Sub | Preamble |
| Merger | Recitals |
| Minimum Condition | Section 1.1(b) |
| Notice Period | Section 6.3(e)(ii) |
| NRS | Recitals |
| Offer | Recitals |
| Offer Closing | Section 1.1(b) |
| Offer Closing Date | Section 1.1(b) |
| Offer Commencement Date | Section 1.1(a) |
| Offer Conditions | Section 1.1(b) |
| Offer Documents | Section 1.1(f) |
| Offer Price | Recitals |
| Parent Employee Benefit Plan | Section 6.11(c) |
| Parent | Preamble |
| Permits | Section 4.12(c) |
| SEC | Section 4.5(a) |
| Shares | Recitals |
| Schedule TO | Section 1.1(f) |
| Schedule 14D-9 | Section 1.2(a) |
| Surviving Corporation | Section 2.1(a) |
| Takeover Provisions | Section 4.21 |
| Termination Date | Section 8.1(b) |
| Transaction Litigation | Section 6.9 |
| Uncertificated Shares | Section 2.3(a) |
| Willful Breach | Section 8.3 |

**1.2 Certain Definitions**. The following terms, as used herein, have the following meanings, which meanings shall be applicable equally to the singular and plural of the terms defined:

***"11th Amendment Effective Date"*** means the "Amendment Effective Date" as defined in the 11th Amendment.

***"11th Amendment"*** means the Eleventh Amendment to the Financing Amendment, entered into on the date of this Agreement and effective as of the 11th Amendment Effective Date.

"***Acquisition Proposal***" means any bona fide written offer, proposal or similar indication of interest contemplating or otherwise relating to an Acquisition Transaction (other than an offer,

proposal or similar indication of interest by Parent, Merger Sub or one of Parent's other Subsidiaries).

"***Acquisition Transaction***" means any transaction or series of related transactions (other than the Transactions) involving: (i) any acquisition or purchase by any Person, directly or indirectly, of more than fifteen percent (15%) of any class of outstanding voting or equity securities of the Company, or any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in such Person beneficially owning more than fifteen percent (15%) of the total voting power of the Company; (ii) any merger, consolidation, share exchange, business combination, joint venture, recapitalization, reorganization or other similar transaction involving the Company and any Person; or (iii) any sale, lease, exchange, transfer or other disposition to any Person of assets of the Company representing more than fifteen percent (15%) of the consolidated assets, revenue or net income of the Company and the Company Subsidiaries (with assets being measured by the fair market value thereof); provided that, for the avoidance of doubt, all references to "Person" in this definition shall include any "group" as defined pursuant to Section 13(d) of the Exchange Act but shall exclude Parent or any of its Affiliates or Representatives.

"***Affiliate***" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Other than in the case of Section 4.10, Section 5.4, Section 5.9, Section 6.6 and Article VIII, in no event shall Parent or any of its Subsidiaries be considered an Affiliate of any portfolio company or investment fund managed by Essex Woodlands Services Co., Inc., nor shall any such portfolio company or investment fund be considered to be an Affiliate of Parent or any of its Subsidiaries.

"***Anti-Corruption Laws***" means the Foreign Corrupt Practices Act of 1977; the Anti-Kickback Act of 1986; the UK Bribery Act of 2010; and the Anti-Bribery Laws of the People's Republic of China or any applicable Laws of similar effect, in each case, as amended and the related regulations and published interpretations thereunder; and any other anti-bribery, anti-corruption or anti-money laundering Laws promulgated by any Governmental Authority.

"***Antitrust Law***" means the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, the HSR Act, and all other Laws, including merger control Laws and Foreign Antitrust Laws, prohibiting, limiting, or promulgated or intended to govern conduct having the purpose or effect of monopolization, restraint of trade, or substantial lessening of competition.

"***Business Day***" means any day except Saturday, Sunday or any other day on which commercial banks located in New York or London, United Kingdom are authorized or required by Law to be closed for business.

"***CARES Act***" means the Coronavirus Aid, Relief, and Economic Security Act of 2020 (Pub. L. 116–136) (including any changes in state or local law that are analogous to provisions of

the CARES Act or adopted to conform to the CARES Act), including the Paycheck Protection Program Flexibility Act (P.L.116-142).

"***Code***" means Internal Revenue Code of 1986, as amended.

"***Company Common Stock***" means the common stock, par value $0.001 per share, of the Company.

"***Company Employee***" means any employee or officer of the Company or any of the Company Subsidiaries.

"***Company Equity Awards***" means the Company Options, Company RSUs and Company PSUs, issued under the Stock Plans.

"***Company ESPP***" means the TherapeuticsMD, Inc. 2020 Employee Stock Purchase Plan.

"***Company Intellectual Property***" means all of the Intellectual Property Rights owned or purported to be owned by the Company or any Company Subsidiary (whether solely or jointly with one or more other Persons) or exclusively licensed to the Company or any Company Subsidiary.

"***Company Intervening Event***" means any event, development or change in circumstances that materially affects the business, assets or operations of the Company (other than any event, occurrence, fact or change primarily resulting from a breach of this Agreement by the Company) and that was neither known to the Company Board nor reasonably foreseeable as of or prior to the date of this Agreement, which event, occurrence, fact or change becomes known to the Company Board, other than (a) changes in the Company Common Stock price, in and of itself (however, the underlying reasons for such changes may constitute a Company Intervening Event), (b) any Acquisition Proposal or (c) the fact that, in and of itself, the Company exceeds any internal or published projections, estimates or expectations of the Company's revenue, earnings or other financial performance or results of operations for any period, in and of itself (however, the underlying reasons for such events may constitute a Company Intervening Event).

"***Company Material Adverse Effect***" means any event, effect, occurrence, fact, circumstance, condition or change that, individually or in the aggregate, has had or would be reasonably likely to (a) have a material adverse effect the business, operations, condition (financial or otherwise) or results of operations of the Company and the Company Subsidiaries or (b) prevent or materially delay the ability of the Company to consummate the Transactions; provided, however, that solely for purposes of clause (a), none of the following shall be deemed in and of themselves, either alone or in combination, to constitute, and except as provided below, none of the following shall be taken into account in determining whether there is, or would reasonably be likely to be, a Company Material Adverse Effect:

(i) general economic or political conditions (or changes or disruptions in such conditions) in the United States or any other country or region in the world, or conditions in the global economy generally;

(ii) conditions (or changes or disruptions in such conditions) generally affecting the industries in which the Company and Company Subsidiaries operate;

(iii) conditions (or changes or disruptions in such conditions) in the securities markets, capital markets, credit markets, currency markets or other financial markets in the United States or any other country or region in the world, including (A) changes in interest rates in the United States or any other country or region in the world and changes in exchange rates for the currencies of any countries, (B) any suspension of trading in equity, debt, derivative or hybrid securities, securities generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world, and (C) any decline in the price or trading volume of any security (including Company Common Stock) or any market index (provided that the underlying causes of such decline with respect to the Company Common Stock (subject to the other provisions of this definition) shall not be excluded);

(iv) political conditions (or changes or disruptions in such conditions) in the United States or any other country or region in the world or acts of war (whether or not declared), armed or unarmed hostilities or attacks, acts of terrorism, sabotage, or the escalation or worsening thereof in the United States or any other country or region in the world;

(v) (A) any actions taken by Parent or any of its controlled Affiliate, (B) any actions taken by the Company or the Company Subsidiaries to which Parent has requested in writing or (C) the Company taking any action expressly required by this Agreement or the Velocity Transaction Documents;

(vi) any changes in applicable Law (including COVID-19 Measures), accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof, in each case after the date hereof;

(vii) other than for purposes of Section 4.3(c) and Section 4.3(d) (but subject to disclosure in the Company Disclosure Letter for such Sections) and clause (c)(iii) of Annex A, the announcement, pendency or completion of this Agreement, including, to the extent resulting therefrom, (A) the identity of Parent, (B) the termination of (or the failure or potential failure to renew or enter into) any Contracts with customers, suppliers, distributors or other business partners

and (C) any other negative development in the Company's and the Company Subsidiaries' relationships with any of their employees, customers, suppliers, distributors, or other business partners;

(viii) any natural hurricane, earthquake, flood, disaster, acts of God, pandemic (including COVID-19) or other force majeure events in the United States or any other country or region in the world; and

(ix) changes in the Company's stock price or the trading volume of the Company's stock, in and of itself, or any failure by the Company to meet any internal or published forecasts, estimates, projections or expectations of the Company's revenue, earnings or other financial performance or results of operations for any period (provided that the underlying causes of such changes or failures (subject to the other provisions of this definition) shall not be excluded);

except in the case of clauses (i) through (iv), (vi) and (viii), to the extent that any such event, effect, occurrence, fact, circumstance, condition or change has a disproportionate adverse effect on the Company and the Company Subsidiaries, taken as whole, relative to the adverse effect such event, effect, occurrence, fact, circumstance, condition or change has on other companies operating in the industries in which the Company and the Company Subsidiaries operate.

"***Company Option***" means an option to purchase shares of Company Common Stock pursuant to a Stock Plan or otherwise.

"***Company Plan***" means an Employee Benefit Plan maintained, adopted, sponsored, contributed or required to be contributed to by the Company, any Company Subsidiary or any Entity with which the Company or any Company Subsidiary is considered a single employer under Section 414(b), (c) or (m) of the Code (a "***Company ERISA Affiliate***") with respect to any current or former employee, officer or director of the Company or any of the Company Subsidiaries or any beneficiary or dependent thereof or with respect to which the Company, any of the Company Subsidiaries or any Company ERISA Affiliate would reasonably be expected to have any liability.

"***Company Product(s)***" means any and all products that currently are in development, marketed, offered, sold, licensed, provided or distributed by, or on behalf of, the Company or any Company Subsidiary.

"***Company PSU***" means restricted stock units issued pursuant to a Stock Plan or otherwise whose vesting is conditioned in full or in part based on achievement of performance goals or metrics.

"***Company RSU***" means restricted stock units issued pursuant to a Stock Plan or otherwise.

"***Contract***" means any agreement, contract, subcontract, lease, license, understanding, instrument, note, bond, mortgage, indenture, option, warranty, insurance policy, benefit plan or other legally binding commitment.

"***COVID-19***" means SARS-CoV-2 or COVID-19, and all evolutions, variations or mutations thereof.

"***COVID-19 Measures***" means any quarantine, "shelter in place," "stay at home," workforce reduction, reduced capacity, social distancing, shut down, closure, sequester, safety or any other guideline, recommendation, law, order or directive promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including the CARES Act.

"***Electronic Data Room***" means the online data room located at https://ws.onehub.com/home.

"***Employee Benefit Plan***" means (i) each "employee benefit plan" (as such term is defined in ERISA § 3(3)); and (ii) each other benefit or compensation plan, program, policy, Contract or arrangement, including any retirement, post-retirement, paid time-off, deferred compensation, profit sharing, unemployment compensation, welfare, fringe benefit, bonus, incentive, equity or equity-based compensation, severance, termination, retention, transaction bonus, employment, consulting or change in control plan, program, policy, Contract or arrangement (whether or not subject to ERISA § 3(3)).

"***Entity***" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

"***Environmental Law***" means any federal, state, local or foreign Law relating to pollution or protection of human health, worker health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including any law or regulation relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

"***FDA***" means the United States Food and Drug Administration.

"***FDA Fraud Policy***" means the policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991).

"***Financing Agreement***" means that certain Financing Agreement, dated as of April 24, 2019, by and among the Company, as borrower, certain other subsidiaries of the Company, various lenders party thereto from time to time and Sixth Street Specialty Lending, Inc. (f/k/a TPG Specialty Lending, Inc.), as amended, restated, supplemented or modified from time to time, including as amended by the Tenth Amendment and the 11th Amendment thereto, entered into on the date of this Agreement.

"***Fraud***" means the actual, knowing and intentional fraud of any Person in connection with the representations and warranties set forth in Article IV and Article V.

"***GAAP***" means United States generally accepted accounting principles, applied on a consistent basis, as in effect from time to time.

"***Governmental Authority***" means any federal, state, local, international, multinational, supranational or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority, or any arbitrator, court or tribunal of competent jurisdiction.

"***Governmental Authorization***" means any: (a) permit, license, certificate, franchise, permission, variance, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law; or (b) right under any Contract with any Governmental Authority.

"***Governmental Health Program***" means any federal health program as defined in 42 U.S.C. § 1320a-7b(f), including Medicare, Medicaid, TRICARE, CHAMPVA, and state health care programs (as defined therein), and any health insurance program for the benefit of federal employees, including those under chapter 89 of title 5, United States Code.

"***Hazardous Materials***" means any waste, material, or substance that is listed, regulated or defined under any Environmental Law and includes any pollutant, chemical substance, hazardous substance, hazardous waste, special waste, solid waste, asbestos, mold, radioactive material, polychlorinated biphenyls, petroleum or petroleum-derived substance or waste.

"***Health Authority***" means the Governmental Authorities that administer Health Laws, including the FDA, Centers for Medicare and Medicaid Services, and the U.S. Department of Health and Human Services Office of Inspector General.

"***Health Law***" means any Law applicable to the business of the Company or Company Products, or biopharmaceutical or health care products and services applicable to the Company or Company Products, including any applicable Law the purpose of which is to ensure the safety, efficacy and quality of biopharmaceutical products by regulating the research, development, manufacturing and distribution of such products, any applicable Law relating to the import or export of the Company Products, any applicable Law relating to good laboratory practices, good clinical practices, investigational use, product marketing authorization, manufacturing facilities compliance, packaging, good manufacturing practices, labeling, advertising, promotional practices, safety surveillance, record keeping and filing of required reports, and relating to promotion and sales of pharmaceutical products to providers and facilities that bill or submit claims to a Governmental Health Program or Payor, or any and all Laws relating to the regulation, provision, management, administration of, ordering or arranging for, or payment or reimbursement for any health care items or services, including,: (i) the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 301 et seq., and all regulations and informal and formal guidance issued by the FDA pursuant thereto, (ii) the Public Health Service Act, (iii) the Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), (iv) the False Claims Act (31 U.S.C. § 3729 et seq.), (v) the Exclusion

Laws (42 U.S.C. §§ 1320a-7 and 1320a-7a), (vi) the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), (vii) the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), (viii) the Federal Health Care Fraud Law (18 U.S.C. § 1347), (ix) Physician Payments Sunshine Act (42 U.S.C. § 1320a–7h), (x) HIPAA, (xi) Medicare (Title XVIII of the Social Security Act), (xii) Medicaid (Title XIX of the Social Security Act), (xiii) the Occupational Safety and Health Act and (xiv) all applicable state privacy and confidentiality laws.

"***HIPAA***" means the following, as the same may be amended, modified or supplemented from time to time, any successor statute thereto, and together with any and all rules or regulations promulgated from time to time thereunder: (i) the Health Insurance Portability and Accountability Act of 1996; and (ii) the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009).

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

"***Indebtedness***" means, with respect to any Person, all indebtedness for borrowed money (including the issuance of any debt security) to any Person (other than the Company or its Subsidiary), other indebtedness of such Person evidenced by credit agreements, notes, bonds, indentures, securities, debentures or similar Contracts to any Person, and any obligations in respect of letters of credit and bankers' acceptances (other than letters of credit used as security for leases) and all indebtedness of another Person referred to in clauses (a) through (c) above guaranteed by such Person.

"***Intellectual Property Rights***" means any and all of the following (and all statutory and/or common law rights throughout the world in, arising out of, or associated with any of the following): (i) all United States and foreign patents and utility models and applications therefor (including provisional applications) and all reissues, divisions, renewals, reexaminations, extensions, provisionals, substitutions, continuations, continuations in part and equivalents thereof (collectively, "***Patents***"); (ii) all Trade Secrets; (iii) copyrights and copyrightable works, database and design rights, including data collections, and all other rights, including "moral" rights corresponding thereto in any works of authorship (including copyrights in Software), whether published or unpublished (collectively, "***Copyrights***"); (iv) all trademark rights and similar rights in trade names, trade dress, logos, trademarks and service marks, brand names, corporate names and other indicia of commercial source or origin, together with the goodwill associated with any of the foregoing (collectively, "***Trademarks***"); (v) all rights in databases and data collections (including knowledge databases, customer lists and customer databases); (vi) all rights to uniform resource locators, web site addresses and domain names (collectively, "***Domain Names***"); (vii) any similar, corresponding or equivalent rights to any of the foregoing; and (viii) any registrations of or applications to register any of the foregoing.

"***Investor***" means, EW Healthcare Partners Fund 2 LP, a Delaware limited partnership.

"***IT Assets***" means all computers (including, servers, firewalls, workstations, desktops, laptops and handheld devices), Software, websites, hardware, networks, firmware, middleware, routers, hubs, switches, data communications lines, data storage devices, information security and telecommunications capabilities, data centers, operating systems and all other information

technology equipment and other similar or related items of information technology systems, hardware and infrastructure, in each of the foregoing, owned, licensed or used by or for the Company or any of the Company Subsidiaries.

"***Knowledge***" means, with respect to the Company, the actual knowledge of those individuals set forth in Section 1.1(a) of the Company Disclosure. With respect to Company Intellectual Property, "Knowledge" or "Known" includes reasonable inquiry of such Person's direct reports but does not require the Company to conduct, have conducted, obtain, review or have reviewed any freedom to operate opinions or similar opinions of counsel.

"***Law***" means any statute, law, ordinance, regulation, rule, code, Order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"***Legal Proceeding***" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

"***Licensed Intellectual Property***" means all of the Intellectual Property Rights owned by a third party that is licensed to the Company or any Company Subsidiary pursuant to a written Contract to which Company or a Company Subsidiary is a party.

"***Lien***" means any lien, pledge, hypothecation, charge, mortgage, security interest, option, right of first refusal or offer, preemptive right, encumbrance or community property interest of any kind or nature whatsoever.

"***Nasdaq***" means The NASDAQ Global Market.

"***Object Code***" means computer Software in binary form that, is intended to be directly executable by a computer after suitable processing and linking but without the intervening steps of compilation or assembly.

"***Order***" means, with respect to any Person, any order, judgment, decision, decree, injunction, ruling, writ, assessment or other similar requirement issued, enacted, adopted, promulgated or applied by any Governmental Authority or arbitrator that is binding on or applicable to such Person.

"***Payor***" means any and all Governmental Health Programs and all other health care service plans, health maintenance organizations, health insurers and/or other private, commercial, or governmental third-party payors.

"***Permitted Lien***" means (i) mechanics', carriers', workmen's, warehousemen's, repairmen's or other like Liens arising or incurred in the ordinary course of business that are not due and payable or that are being contested in good faith by appropriate proceedings; (ii) Liens for Taxes that are not due and payable or that are being contested in good faith by appropriate and for which adequate reserves have been established in accordance with GAAP; (iii) other than with respect to Intellectual Property Rights, minor defects or irregularities in title, easements, rights-of-way, covenants, restrictions, and other, similar Liens that would not, individually or in the

aggregate, reasonably be expected to materially impair the value of or continued use and operation of the properties and assets to which they relate; (iv) zoning, building and other similar Laws (excluding violations thereof); (v) Liens discharged at or prior to the Closing; (vi) statutory Liens to secure obligations to landlords, lessors or renters under leases or rental agreements that have not been breached; (vii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law; (viii) non-exclusive licenses to Intellectual Property Rights granted in the ordinary course of business; and (ix) non-monetary Liens (excluding Liens on Intellectual Property Rights) that do not, individually or in the aggregate, materially interfere with the use, operation or transfer of, or any of the benefits of ownership of, the property of the Company and the Company Subsidiaries, taken as a whole.

"***Person***" means any individual, Entity or Governmental Authority.

"***Personal Data***" means (i) any information defined as "personal data", "personally identifiable information" or "personal information" under any Privacy and Data Security Requirement, (ii) any information that, alone or in combination with other information, can reasonably be used to identify an individual natural person or relating to an identified or identifiable natural person, directly or indirectly, including name, a unique identification number, government-issued identifier (including Social Security number and driver's license number), physical address, gender and date of birth and (iii) individually identifiable health information constituting "protected health information" as defined under 45 C.F.R. § 160.103. Personal Data that has been pseudonymized shall also be considered Personal Data to the extent treated as such under any Privacy and Data Security Requirement.

"***Privacy and Data Security Requirements***" means (i) any Laws and self-regulatory guidelines (including of any applicable foreign jurisdiction) regulating the Processing of Personal Data, (ii) obligations under all Contracts to which the Company or any of the Company Subsidiaries is a party that relate to Personal Data and (iii) all of the Company's and the Company Subsidiaries' internal and publicly posted policies and notices (including if posted on the Company's or the Company Subsidiaries' products or services) regarding the Processing of Personal Data.

"***Process***" or "***Processing***" with regard to Personal Data or IT Systems means the collection, receipt, use, storage, safeguarding, securing (technical, physical or administrative), maintenance, retention, transmission, access, processing, recording, distribution, transfer (including cross-border), sharing, import, export, protection (including security measures), deletion, disposal or disclosure or other activity regarding or performed on Personal Data or IT Systems (whether electronically or in any other form or medium).

"***Real Property Leases***" means the leases, subleases, licenses and occupancy agreements, together with all amendments thereto, underlying the Leased Real Property or otherwise affecting the Leased Real Property.

"***Registered Intellectual Property***" means all United States, international and foreign: (i) Patents; (ii) Trademarks; (iii) Copyrights; (iv) Domain Names; and (v) any other material

Intellectual Property Rights, in each case, that are the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Authority.

"***Regulatory Permits***" means any and all licenses, franchises, permits, certificates, certifications, qualifications, notices, waivers, privileges, consents, approvals, clearances, enrollments, accreditations, letters of non-reviewability, certificates of need, supplier or provider numbers, exemptions, registrations, listing, concessions or other authorizations required to have been obtained from or submitted to, or filings required to have been made with, Governmental Authorities pursuant to a Health Law material to the operation of the business of the Company and Company Subsidiaries.

"***Release***" means any presence, emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into or upon the environment, including the air, soil, improvements, surface water, groundwater, the sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage, or disposal systems.

"***Representatives***" means officers, directors, employees, agents, attorneys, accountants, advisors and investment bankers.

"***Sanctioned Country***" means any country or region or government thereof that is, or has been in the last five years, the subject or target of a comprehensive embargo under Trade Control Laws (including Cuba, Iran, North Korea, Syria, Venezuela, and the Crimea, Donetsk, and Luhansk regions of Ukraine).

"***Sanctioned Person***" means any Person that is the subject or target of sanctions or restrictions under Trade Control Laws including: (i) any Person listed on any U.S. or non-U.S. sanctions- or export-related restricted party list, including the U.S. Department of the Treasury Office of Foreign Assets Control's ("OFAC") List of Specially Designated Nationals and Blocked Persons, or any other sanctions- or export-related restricted party list maintained by OFAC, the U.S. Department of Commerce Bureau of Industry and Security, or the U.S. Department of State; (ii) any Person that is, in the aggregate, 50 percent or greater owned, directly or indirectly, or otherwise controlled by a Person or Persons described in clause (i); or (iii) any Person located, organized, or resident in or a national of a Sanctioned Country.

"***Sarbanes-Oxley Act***" means the Sarbanes-Oxley Act of 2002, as amended and the regulations promulgated thereunder.

"***Securities Act***" means the Securities Act of 1933, as amended, and the regulations promulgated thereunder.

"***Software***" means any and all (i) computer programs, applications, files, user interfaces, application programming interfaces, diagnostics, software development tools and kits, templates, menus, analytics and tracking tools, compilers, libraries, version control systems, operating systems, including any and all software implementations of algorithms, models and methodologies for any of the foregoing, whether in Source Code, Object Code or other form, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or

otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing and (iv) all user documentation, including user manuals and training materials, relating to any of the foregoing.

"***Source Code***" means computer Software and code, in form other than Object Code or machine readable form, including related programmer comments and annotations, help text, data and data structures, instructions and procedural, object-oriented and other code, which may be printed out or displayed in human readable form.

"***Stock Plans***" means, collectively, the TherapeuticsMD, Inc. 2009 Long Term Incentive Compensation Plan, the TherapeuticsMD, Inc. Amended and Restated 2012 Stock Incentive Plan, and the TherapeuticsMD, Inc. 2019 Stock Incentive Plan, each as amended.

"***Subsidiary***" An Entity shall be deemed to be a "Subsidiary" of another Person if such Person directly or indirectly owns, beneficially or of record: (a) an amount of voting securities of other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity's board of directors or other governing body; or (b) a majority of the outstanding equity or financial interests of such Entity.

"***Superior Proposal***" means a bona fide written Acquisition Proposal that did not result from a breach of Section 6.3 and if consummated would result in a Person owning, directly or indirectly, (a) more than 60% of the outstanding shares of the Company Common Stock or (b) more than 60% of the assets of the Company and the Company Subsidiaries, taken as a whole, in either case, which the Company Board determines in good faith, after consultation with its financial advisor and outside legal counsel: (i) to be reasonably likely to be consummated if accepted; and (ii) if consummated, would result in a transaction more favorable to the Company's stockholders from a financial point of view than the Merger, in each case, taking into account at the time of determination (A) any changes to the terms of this Agreement offered by Parent in response to such Acquisition Proposal and (B) taking into account such financial, regulatory, legal and all other relevant aspects of such Acquisition Proposal (including the likelihood of such Acquisition Proposal to be consummated on a timely basis).

"***Tax***" means any U.S. federal, state, local or non-U.S. tax (including, without limitation, any income tax, franchise tax, license tax, capital gains tax, gross receipts tax, value-added tax, surtax, estimated tax, unemployment tax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, premium tax, windfall profits tax, withholding tax, social security tax, or payroll tax), levy, assessment, tariff, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty, interest or addition thereto), imposed, assessed or collected by or under the authority of any Governmental Authority.

"***Tax Return***" means any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

"***Trade Control Laws***" means all export, reexport, transfer, and import control Laws; U.S. anti-boycott Laws; and U.S. and applicable non-U.S. Laws relating to economic or trade sanctions, including the Laws administered or enforced by the United States (including by OFAC or the U.S. Department of State) and the United Nations Security Council.

"***Trade Secrets***" means any and all inventions (whether or not patentable, reduced to practice or made the subject of a pending patent application), invention disclosures and improvements, all trade secrets, proprietary information, know-how and technology, Source Code, confidential or proprietary information, including ideas, compositions, research and development information, processes, specifications, designs, plans, proposals and all documentation and materials therefore.

"***Transactions***" means the Merger and the other transactions contemplated by this Agreement.

"***Unvested Company Option***" means a Company Option (or portion thereof) that is unvested as of immediately prior to the Effective Time.

"***Vested Company Option***" means a Company Option (or portion thereof) that is vested as of immediately prior to the Effective Time.

"***vitaCare***" means vitaCare Prescription Services, Inc., a Florida corporation.

"***vitaCare Agreement***" means that certain Stock Purchase Agreement, dated March 6, 2022, by and between vitaCare Buyer and the Company, as may be amended from time to time.

"***vitaCare Buyer***" means Good RX, Inc., a Delaware Corporation.

"***vitaCare Other Transaction Document***" means each of the Transaction Documents (as defined in the vitaCare Agreement).

"***vitaCare Transaction***" means the transactions contemplated by the vitaCare Transaction Documents.

"***vitaCare Transaction Documents***" means, collectively, the vitaCare Agreement and the vitaCare Other Transaction Documents.

"***Warrants***" means any outstanding and unexpired warrants to acquire Company Common Stock issued pursuant to the Warrant Documentation.

"***Warrant Documentation***" means the applicable warrant, common stock purchase warrant or similar instrument or agreement granting Warrants of the Company Common Stock..

**EXHIBIT B**
**AMENDED AND RESTATED**
**ARTICLES OF INCORPORATION OF THE SURVIVING CORPORATION**

**SECOND AMENDED AND RESTATED**
**ARTICLES OF INCORPORATION**
**OF**
**THERAPEUTICSMD, INC.**

ARTICLE I
NAME

The name of the corporation is TherapeuticsMD, Inc. (the "Corporation").

ARTICLE II
PURPOSE

The Corporation is formed for the purpose of engaging in any lawful activity for which corporations may be organized under the laws of the State of Nevada.

ARTICLE III
AUTHORIZED CAPITAL STOCK

The total authorized capital stock of the Corporation shall consist of One Thousand (1,000) shares of common stock, par value $0.001 per share.

ARTICLE IV
DIRECTORS

The members of the governing board of the Corporation are styled as directors. The Board of Directors shall be elected in such manner as shall be provided in the bylaws of the Corporation. The number of directors may be changed from time to time in such manner as provided in the bylaws of the Corporation.

ARTICLE V
INDEMNIFICATION; EXCULPATION

A. The liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the Nevada Revised Statutes ("NRS"). If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time.

B. In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the Corporation in its bylaws or by agreement, the expenses of directors and officers incurred in defending a civil or criminal action, suit or proceeding, involving alleged acts or omissions of such directors or officers in their respective capacities as directors or officers of the Corporation must be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay

the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation.

C. Any repeal or modification of this Article V approved by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the liability of a director or officer of the Corporation existing as of the time of such repeal or modification. In the event of any conflict between this Article V and any other article of the Corporation's articles of incorporation, the terms and provisions of this Article V shall control.

## ARTICLE VI
## SPECIAL PROVISIONS REGARDING DISTRIBUTIONS

Notwithstanding anything to the contrary in the articles of incorporation or the bylaws of the Corporation, the Corporation is hereby specifically allowed to make any distribution that otherwise would be prohibited by NRS 78.288(2)(b).

* **

**ANNEX A**

**CONDITIONS TO THE OFFER**

Capitalized terms used in this Annex A and not otherwise defined herein will have the meanings assigned to them in the Agreement and Plan of Merger to which it is attached (the "***Agreement***").

Notwithstanding any other term of the Offer or this Agreement, Merger Sub shall not be required to, and Parent shall not be required to cause Merger Sub to, accept for payment or, subject to any applicable rules and regulations of the SEC (including Rule 14e-1(c) under the Exchange Act (relating to the obligation of Merger Sub to pay for or return tendered Shares promptly after termination or withdrawal of the Offer)), to pay for any Shares validly tendered and not validly withdrawn prior to any then-scheduled Expiration Date in connection with the Offer if:

(a) the Minimum Condition is not satisfied; or

(b) any of the following conditions shall exist as of the Expiration Date:

(i) the representations and warranties of the Company set forth in Section 4.2(a) and Section 4.2(b) of the Agreement (the "***Capitalization Representations***") shall not be true and correct as of the Agreement Date and as of the Expiration Date with the same force and effect as if made on and as of such date, except for any *de minimis* inaccuracies (it being understood that the accuracy of those representations and warranties that address matters only as of a specified date shall be measured as set forth in this clause (c)(i) only as of such date);

(ii) (A) The representations and warranties of the Company set forth in Section 4.1, Section 4.3(a), Section 4.3(b), and Section 4.8 of the Agreement (the "***Fundamental Representations***) shall not be true and correct in all material respects as of the Agreement Date and as of the Expiration Date with the same force and effect as if made on and as of such date, (it being understood that the accuracy of those representations and warranties that address matters only as of a specified date shall be measured as set forth in this clause (c)(ii) only as of such date); and (B) the representations and warranties of the Company set forth in Section 4.6(c) shall be true and correct in all respects as of the Agreement Date and as of the Expiration Date with the same force and effect as if made on and as of such date;

(iii) The representations and warranties of the Company set forth in the Agreement (other than the Capitalization Representations, the Fundamental Representations and the representations and warranties set forth in Section 4.6(c)) shall not be true and correct as of the Agreement Date and as of the Expiration Date with the same force and effect as if made on and as of such date, except for any failure to be so true and correct which has not had, or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (it being understood that the accuracy of those representations and warranties that address matters only as of a specified date shall be measured as set forth in this clause (c)(iii) only as of such date); provided, however, that for

purposes of determining the accuracy of the representations and warranties of the Company set forth in this Agreement for purposes of this clause (c)(iv), all qualifications in the representations and warranties based on a "Company Material Adverse Effect" and all materiality qualifications and other qualifications based on the word "material" or similar phrases (but not dollar thresholds) contained in such representations and warranties shall be disregarded;

(iv) the Agreement shall have been terminated in accordance with its terms;

(v) the Company shall not have complied with or performed in all material respects its covenants, agreements and obligations required to be complied with or performed by it on or prior to the Expiration Time under the Agreement;

(vi) since the date hereof, there has been any event, effect, occurrence, fact, circumstance, condition or change that, individually or in the aggregate, has had or would be reasonably likely to have a Company Material Adverse Effect;

(vii) the Company shall not have delivered to Parent a certificate, signed on behalf of the Company by its chief executive officer and chief financial officer, to the effect that the conditions set forth in clauses (i), (ii), (iii), (v) and (vi) of paragraph (c) above shall not have occurred and be continuing as of immediately prior to the Expiration Date;

(viii) there is any "Default" or "Event of Default" (as such terms are defined in the Financing Agreement) that has occurred, is continuing to occur under, and has not been waived by the requisite parties to the Financing Agreement; and

(ix) a Governmental Authority of competent jurisdiction has announced, enacted, issued, promulgated, entered, enforced or deemed applicable to the Merger any applicable Law, or issued or granted any Legal Restraint that is in effect and that has the effect of making the consummation of the Offer or the Merger illegal or which has the effect of prohibiting, enjoining, preventing or restraining the consummation of the Offer or the Merger.

The foregoing conditions shall be in addition to, and not a limitation of, the rights and obligations of Merger Sub and Parent to extend, terminate or modify the Offer pursuant to the terms and conditions of the Agreement. The foregoing conditions are for the sole benefit of Merger Sub and Parent and, subject to the terms and conditions of the Agreement and applicable Law, may be waived by Merger Sub or Parent, in whole or in part at any time and from time to time prior to the Expiration Date in the sole discretion of Merger Sub or Parent (other than the Minimum Condition, which may be waived by Merger Sub and Parent only with the prior written consent of the Company). The failure by Merger Sub or Parent at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time, subject to the applicable rules and regulations of the SEC.

**Exhibit 10.1**

**AMENDMENT NO. 10**
**TO FINANCING AGREEMENT**

**AMENDMENT NO. 10 TO FINANCING AGREEMENT**, dated as of May 27, 2022 (this "Amendment"), to the Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among THERAPEUTICSMD, INC., a Nevada corporation ("Company" or "Borrower"), certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party thereto, and SIXTH STREET SPECIALTY LENDING, INC., a Delaware corporation ("Sixth Street"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

**WHEREAS**, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain terms and conditions of the Financing Agreement; and

**WHEREAS**, the Administrative Agent and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

(i) ""Amendment No. 10" means Amendment No. 10 to Financing Agreement, dated as of May 27, 2022, by and among the Loan Parties, the Administrative Agent and the Lenders."

(ii) ""Amendment No. 10 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 10."

(iii) ""Amendment No. 10 PIK Fee" means $1,780,000, which will be paid in kind by being added to the principal balance of the Term Loans on the Amendment No. 10 Effective Date."

(iv) ""Merger Agreement" shall have the meaning set forth in Amendment No. 10."

(b) Existing Definitions. Section 1.01 of the Financing Agreement is hereby amended as follows:

(i) The definition of "Obligations" is hereby amended and restated to read as follows:

""Obligations" means all obligations of every nature of each Loan Party and its Subsidiaries from time to time owed to the Administrative Agent (including former Administrative Agents), the Lenders or any of them, under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding), fees (including, (i) the Amendment No. 9 PIK Fee but excluding the Waivable Portion of Amendment No. 9 PIK Fee and (ii) the Amendment No. 10 PIK Fee), expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise (including obligations of performance)."

(ii) The definition of "Term Loan Maturity Date" is hereby amended and restated to read as follows:

""Term Loan Maturity Date" means the earlier of (a) July 13, 2022 and (b) the date that the Term Loan shall become due and payable in full hereunder, whether by acceleration or otherwise."

(c) Section 2.4 (Interest). Section 2.4 of the Financing Agreement is hereby amended as follows:

(i) Clause (e) is hereby amended and restated to read as follows:

"(e) Interest on each Term Loan shall be payable in cash and in arrears (i) upon any prepayment of that Term Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid and (ii) on the Term Loan Maturity Date."

(ii) Clause (f) is hereby amended and restated to read as follows:

"(f) From and after the Amendment No. 9 Effective Date interest will accrue and be payable on the Amendment No. 9 PIK Fee other than the Waivable Portion of the Amendment No. 9 PIK Fee."

(iii) By adding the following new paragraph (g) to read as follows:

"(g) From and after the Amendment No. 10 Effective Date interest will accrue and be payable on the Amendment No. 10 PIK Fee."

(d) Section 5.15 (Milestones). Section 5.15 of the Financing Agreement is hereby deleted in its entirety.

(e) Section 6.8(a) (Minimum Qualified Cash). Section 6.8(a) of the Financing Agreement is hereby amended and restated in its entirety to read as follows:

"(a) Minimum Qualified Cash. Borrower shall not permit Qualified Cash to be less than $10,000,000 at any time."

(f) Event of Default. A new Section 8.1(p) is hereby added to the Financing Agreement to read as follows:

"(p) Termination of Merger or Tender Offer. (i) The Merger Agreement shall have terminated for any reason or (ii) the public tender offer commenced by Athene Merger Sub, Inc., a Nevada corporation ("Merger Sub"), for all of the Borrower's outstanding common stock shall not have commenced by June 10, 2022, or, after having been commenced, shall have terminated or been withdrawn."

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent on or before June 1, 2022 (the first date on or before June 1, 2022 upon which all such conditions shall have been satisfied being hereinafter referred to as the "Amendment Effective Date"):

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Amendment Effective Date (i) the Amendment No. 10 PIK Fee, which fee shall be fully earned, due and payable to Administrative Agent on the Amendment Effective Date and added to the principal amount of the Term Loan, and (ii) all fees, costs, expenses and taxes then payable, if any, pursuant to Section 2.7 or 10.2 of the Financing Agreement.

(b) Representations and Warranties. The representations and warranties contained in this Amendment and in Article IV of the Financing Agreement and in each other Loan Document (with the exception of the representations and warranties made in Sections 4.5, 4.9, 4.19 and 4.23(d) of the Financing Agreement) shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(c) No Default; Event of Default. No Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(d) Delivery of Documents. The Administrative Agent shall have received on or before the Amendment Effective Date:

(i) this Amendment, duly executed by the Loan Parties, the Administrative Agent and the Lenders;

(ii) a copy of the Agreement and Plan of Merger by and among the Borrower, Athene Parent, Inc., a Nevada corporation ("Parent"), and Merger Sub, a wholly owned direct subsidiary of Parent, dated May 27, 2022 (the "Merger Agreement") and each material document related thereto, including the documents for the Tender Offer (collectively, the "Merger Documents"), duly executed by each of the parties thereto; and

(iii) Amendment No. 11 to the Financing Agreement ("Amendment No. 11"), duly executed by the Loan Parties, the Administrative Agent and the Lenders.

(e) Liens; Priority. The Administrative Agent shall be satisfied that the Administrative Agent has been granted, and holds, for the benefit of the Administrative Agent and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Liens, to the extent such Liens and security interests are required pursuant to the Loan Documents to be granted or perfected on or before the Amendment Effective Date.

(f) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with any Loan Document or the transactions contemplated thereby or the conduct of the Loan Parties' business shall have been obtained or made and shall be in full force and effect. There shall exist no claim, action, suit, investigation, litigation or proceeding (including, without limitation, shareholder or derivative litigation) pending or, to the knowledge of any Loan Party, threatened in any court or before any arbitrator or Governmental Authority which (i) relates to the Loan Documents or the transactions contemplated thereby or (ii) could reasonably be expected to have a Material Adverse Effect.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or to grant to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect

of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Administrative Agent or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Administrative Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Administrative Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Administrative Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Administrative Agent and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Administrative Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor

against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Estoppel; Term Loan. To induce the Administrative Agent and the Lenders to enter into this Amendment, each Loan Party hereby acknowledges and agrees that there exists no Default or Event of Default as of the Amendment Effective Date. Each Loan Party hereby acknowledges and agrees that as of the Amendment Effective Date (after giving effect to the effectiveness of this Amendment No. 10 and the payment in kind of the Amendment No. 10 PIK Fee), the outstanding principal amount of the Term Loan is $90,780,000 and no right of offset, defense, counterclaim or objection exists in favor of any Loan Party as against Administrative Agent or any Lender with respect to the Obligations.

9. Further Assurances. The Loan Parties shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under applicable law or as Administrative Agent may reasonably request, in order to effect the purposes of this Amendment.

10. Expenses. Notwithstanding anything to the contrary contained herein or in the Financing Agreement (including, for the avoidance of doubt, Section 10.2 thereof), the amount of out-of-pocket fees, costs, expenses and disbursements of counsel required to be paid or reimbursed by the Loan Parties in connection with (a) the preparation for any bankruptcy, liquidation or similar reorganization and/or (b) any discussions with the Administrative Agent and the Lenders (or their respective representatives) with respect to any such bankruptcy, liquidation or similar reorganization; in each case for the period through and including (but not after) the Amendment Effective Date (as defined in Amendment No. 11), shall not exceed $500,000 in the aggregate.

11. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Amendment shall have been incorrect in any respect when made or deemed made, or (ii)

any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

BORROWER:

THERAPEUTICSMD, INC.

By: /s/ Michael C. Donegan
Name: Michael C. Donegan
Title: Interim Chief Financial Officer, Chief Accounting Officer and Vice President Finance

GUARANTORS:

VITAMEDMD, LLC

By: /s/ Hugh O'Dowd
Name: Hugh O'Dowd
Title: Manager

BOCAGREENMD, INC.

By: /s/ Hugh O'Dowd
Name: Hugh O'Dowd
Title: Chief Executive Officer

SIXTH STREET SPECIALTY LENDING, INC., as Administrative Agent and Lender

By: /s/ Joshua Easterly
Name: Joshua Easterly
Title: Chief Executive Officer

TOP IV TALENTS, LLC, as Lender

By: /s/ Steven S. Pluss
Name: Steven S. Pluss
Title: Vice President

TAO TALENTS, LLC, as Lender

By: /s/ Steven S. Pluss
Name: Steven S. Pluss
Title: Vice President

**AMENDMENT NO. 11**
**TO FINANCING AGREEMENT**

**AMENDMENT NO. 11 TO FINANCING AGREEMENT**, dated as of May 27, 2022 (this "Amendment"), to the Financing Agreement, dated as of April 24, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among THERAPEUTICSMD, INC., a Nevada corporation ("Company" or "Borrower"), certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party thereto, and SIXTH STREET SPECIALTY LENDING, INC., a Delaware corporation ("Sixth Street"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

**WHEREAS**, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain terms and conditions of the Financing Agreement; and

**WHEREAS**, the Administrative Agent and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) Amended Financing Agreement. The Financing Agreement is hereby amended (i) to delete the red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (ii) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the marked copy of the Financing Agreement attached as Annex A hereto and made a part hereof for all purposes.

(b) Exhibit. The Financing Agreement is hereby amended to insert a new Exhibit A-2 (Conversion/Continuation Notice) to the Financing Agreement with such replacement exhibit set forth on Annex B hereto.

(c) Schedules. The schedules to the Financing Agreement may be updated as provided in Annex A, with such updates being reasonably acceptable to the Administrative Agent.

3. Conditions to Effectiveness. Section 2 of this Amendment shall become effective only upon satisfaction in full of the following conditions precedent on or before July 13, 2022 (the first date on or before July 13, 2022, upon which all such conditions shall have been satisfied being hereinafter referred to as the "Amendment Effective Date"):

(a) Payment of Fees, Etc. The Borrower shall have paid in cash (x) all accrued and unpaid interest on the Obligations through and including the Amendment Effective Date and (y) all fees, costs, expenses and taxes then payable pursuant to Section 2.7 or 10.2 of the Financing Agreement.

(b) No Event of Default. No Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(c) Delivery of Documents. The Administrative Agent shall have received:

(i) this Amendment, duly executed by the Loan Parties, the Administrative Agent and the Lenders (it being further agreed that the condition precedent set forth in this clause (c)(i) was satisfied on the date hereof);

(ii) the Second Amended and Restated Fee Letter, dated as of the date hereof, duly executed by the Borrower and the Administrative Agent (it being further agreed that the condition precedent set forth in this clause (c)(ii) was satisfied on the date hereof);

(iii) the Capital Call Agreement, dated as of the Amendment Effective Date, duly executed by EW Healthcare Partners Fund 2, L.P., a Delaware limited partnership (the "Shareholder"), the Borrower and the Administrative Agent, in form attached hereto as Exhibit A or as modified in a manner reasonably acceptable to the Borrower and the Administrative Agent;

(iv) the Pledge Agreement, dated as of the Amendment Effective Date, in form attached hereto as Exhibit B or as modified in a manner reasonably acceptable to the Borrower and the Administrative Agent, duly executed by Athene Parent, Inc., a Nevada corporation ("Holdings"), with respect to the pledge of 100% of the Capital Stock of the Borrower, together with the original certificates representing all of the Capital Stock required to be pledged thereunder, accompanied by undated powers executed in blank and other proper instruments of transfer; and

(v) a customary opinion of counsel to the Shareholder, with respect to the Capital Call Agreement, and a customary opinion of counsel to Holdings, with respect to the Pledge Agreement, in each case, dated as of the Amendment Effective Date and otherwise in form and substance reasonably satisfactory to Administrative Agent.

(e) The Merger. The Merger shall have been consummated in accordance with the terms of the Merger Agreement without any amendments, modifications or waivers to the Merger Agreement that are materially adverse to the interests of the Lenders (except for those delivered to and consented to by the Administrative Agent, such consent not to be unreasonably withheld, delayed or conditioned), it being understood that, without limitation to the foregoing, (A) any reduction in the total consideration payable under the Merger Agreement that is equal to or greater than 10% of the total consideration payable thereunder, or (B) any increase in or waiver of the Minimum Condition (as defined in the Merger Agreement), in each case, shall be deemed materially adverse to the interests of the Lenders.

(f) Liens; Priority. The Administrative Agent shall be satisfied that the Administrative Agent has been granted, and holds, for the benefit of the Administrative Agent and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Liens, to the extent such Liens and security interests are required pursuant to the Loan Documents to be granted or perfected on or before the Amendment Effective Date.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or to grant to the Administrative Agent, for the benefit

of the Administrative Agent and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Administrative Agent or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Administrative Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that, as of (and subject to the occurrence of) the Amendment Effective Date: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Administrative Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Administrative Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Administrative Agent and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Administrative Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Estoppel; Term Loan. To induce the Administrative Agent and the Lenders to enter into this Amendment, each Loan Party hereby acknowledges and agrees that, on the Amendment Effective Date, immediately after giving effect to this Amendment, there exists no Default or Event of Default. Each Loan Party hereby acknowledges and agrees that as of the Amendment Effective Date (after giving effect to the effectiveness of this Amendment No. 11, the payment of all accrued and unpaid interest on the Obligations through and including the Amendment Effective Date,

and the payment in kind of the Amendment No. 10 PIK Fee), the outstanding principal amount of the Term Loan is $90,780,000 and no right of offset, defense, counterclaim or objection exists in favor of any Loan Party as against Administrative Agent or any Lender with respect to the Obligations.

9. Expenses. Notwithstanding anything to the contrary contained herein or in the Financing Agreement (including, for the avoidance of doubt, Section 10.2 thereof), the amount of out-of-pocket fees, costs, expenses and disbursements of counsel required to be paid or reimbursed by the Loan Parties in connection with (a) the preparation for any bankruptcy, liquidation or similar reorganization and/or (b) any discussions with the Administrative Agent and the Lenders (or their respective representatives) with respect to any such bankruptcy, liquidation or similar reorganization; in each case for the period through and including (but not after) the Amendment Effective Date, shall not exceed $500,000 in the aggregate.

10. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Amendment shall have been incorrect in any respect when made or deemed made, or (ii) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

BORROWER:

THERAPEUTICSMD, INC.

By: /s/ Michael C. Donegan
Name: Michael C. Donegan
Title: Interim Chief Financial Officer, Chief Accounting Officer and Vice President Finance

GUARANTORS:

VITAMEDMD, LLC

By: /s/ Hugh O'Dowd
Name: Hugh O'Dowd
Title: Manager

BOCAGREENMD, INC.

By: /s/ Hugh O'Dowd
Name: Hugh O'Dowd
Title: Chief Executive Officer

SIXTH STREET SPECIALTY LENDING, INC., as Administrative Agent and Lender

By: /s/ Joshua Easterly
Name: Joshua Easterly
Title: Chief Executive Officer

TOP IV TALENTS, LLC, as Lender

By: /s/ Steven S. Pluss
Name: Steven S. Pluss
Title: Vice President

TAO TALENTS, LLC, as Lender

By: /s/ Steven S. Pluss
Name: Steven S. Pluss
Title: Vice President

**ANNEX A**

**Amended Financing Agreement**

**(See Attached)**

*ANNEX A CONFORMED*
*THROUGH AMENDMENT NO. ~~10~~11*

**FINANCING AGREEMENT**

**dated as of April 24, ~~2019~~2019,**

**as amended through Amendment No. 11 to Financing Agreement dated as of [ ], 2022**

**among**

**THERAPEUTICSMD, INC.**
**as the Borrower,**

**CERTAIN SUBSIDIARIES OF BORROWER**
**as Guarantors,**

**VARIOUS LENDERS FROM TIME TO TIME PARTY HERETO, AND**
**SIXTH STREET SPECIALTY LENDING, INC.,**
**as Administrative Agent**

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FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of April 24, 2019, is entered into by and among THERAPEUTICSMD, INC., a Nevada ~~Corporation~~corporation ("Company" or "Borrower"), and certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party hereto and SIXTH STREET SPECIALTY LENDING, INC., a Delaware corporation ("Sixth Street"), as administrative agent for the Lenders (in such capacity, "Administrative Agent").

W I T N E S E T H:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Lenders have agreed to extend to Company (a) an initial term loan in an aggregate principal amount not exceeding $200,000,000 and (b) delayed draw term loans in an aggregate principal amount not exceeding $100,000,000, in each case the proceeds of which will be used as described in Section 2.2;

WHEREAS, Company has agreed to secure all of its Obligations by granting to Administrative Agent, for the benefit of Secured Parties, a first priority Lien on all of its assets (except as otherwise set forth in the Collateral Documents), including a pledge of all of the Capital Stock of each of its Subsidiaries; and

WHEREAS, Guarantors have agreed to guarantee the obligations of Company hereunder and to secure their respective Obligations by granting to Administrative Agent, for the benefit of Secured Parties, a first priority Lien on all of their respective assets (except as otherwise set forth in the Collateral Documents), including a pledge of all of the Capital Stock of each of their respective Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"Adjusted ~~LIBOR Rate" means, for any Interest Rate Determination Date with respect to an~~ Interest Period for a LIBOR Rate Loan, the greater of (a) the rate per annum obtained by dividing (i) (A) the rate per annum equal to the Intercontinental Exchange Benchmark Administration Ltd. (or such other Person that takes over the administration of such rate) LIBOR Rate ("ICE LIBOR"), as published by a nationally recognized service such as the Dow Jones Market Service (Telerate), Reuters or Bloomberg (or such other commercially available source providing quotations of ICE LIBOR as may be reasonably designated by the Administrative Agent from time to time), or a comparable or successor rate used generally in the market for syndicated commercial loans that has been reasonably approved by the Administrative Agent in consultation with the Borrower (such rate, the "Alternate Benchmark Rate"), at approximately 11:00 a.m., London time on the Interest Rate Determination Date, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (B) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such

~~Interest Period in same day funds in the approximate amount of the LIBOR Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) on~~

~~the Interest Rate Determination Date, by (ii) an amount equal to (A) one, minus (B) the Applicable Reserve Requirement, and (b) 2.70% per annum. Any such determination of LIBOR shall be conclusive absent manifest error.~~Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be equal to the Floor.

"Administrative Agent" has the meaning specified in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by Administrative Agent from time to time by written notice to Borrower in accordance with Section 10.1(a) as the account into which the Loan Parties shall make all payments to Administrative Agent under this Agreement and the other Loan Documents.

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims) or other regulatory body or any mediator or arbitrator, whether pending or, to the knowledge of Borrower or any of its Subsidiaries, threatened in writing against Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries.

"Affected Lender" has the meaning specified in Section 2.19(b).

"Affected Loans" has the meaning specified in Section 2.19(b).

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling (including any member of the senior management group of such Person), controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (a) to vote 10% or more of the securities having ordinary voting power for the election of directors of such Person, or (b) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall Administrative Agent or any Lender or any of their Affiliates or Related Funds be considered an "Affiliate" of any Loan Party. Notwithstanding anything herein to the contrary, in no event shall VitaCare (following the VitaCare Sale) or the acquiring entity in the VitaCare Sale (or any direct or indirect parent or Subsidiary thereof) be considered an "Affiliate" of any Loan Party.

"Aggregate Amounts Due" has the meaning specified in Section 2.13.

"Aggregate Payments" has the meaning specified in Section 7.2.

"Agreement" means this Financing Agreement and any annexes, exhibits and schedules attached hereto as it may be amended, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions of this Agreement.

~~"Alternate Benchmark Rate" has the meaning set forth in the definition of Adjusted LIBOR Rate.~~

"Amendment No. 1" means Amendment No. 1 to Financing Agreement, dated as of December 27, 2019, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 1 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 1.

"Amendment No. 2" means Amendment No. 2 to Financing Agreement, dated as of April 17, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 2 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 2.

"Amendment No. 3" means Amendment No. 3 to Financing Agreement, dated as of May 1, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 3 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 3.

"Amendment No. 4" means Amendment No. 4 to Financing Agreement, dated as of May 13, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 4 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 4.

"Amendment No. 5" means Amendment No. 5 to Financing Agreement, dated as of August 5, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 5 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 5.

"Amendment No. 6" means Amendment No. 6 to Financing Agreement, dated as of November 8, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 6 Effective Date" means the “Amendment Effective Date” as set forth in Amendment No. 6.

"Amendment No. 7" means Amendment No. 7 to Financing Agreement, dated as of January 13, 2021, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 7 Effective Date" means the “Amendment Effective Date” as set forth in Amendment No. 7.

"Amendment No. 8" means Amendment No. 8 to Financing Agreement, dated as of March 1, 2021, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 1 Effective Date" means the "Amendment Effective Date" as set forth in ~~Amendment No. 1.~~

"Amendment No. 2 Effective Date" means the "Amendment Effective Date" as set forth in ~~Amendment No. 2.~~

"Amendment No. 3 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 3.

"Amendment No. 4 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 4.

"Amendment No. 5 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 5.

"Amendment No. 6 Effective Date" means the “Amendment Effective Date” as set forth in Amendment No. 6.

"Amendment No. 7 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 7.

"Amendment No. 8 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 8."

"Amendment No. 9" means Amendment No. 9 to Financing Agreement, dated as of March 9, 2022, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 9 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 9.

"Amendment No. ~~9 PIK Fee" means $30,000,000, which will be paid in kind by being added to the principal balance of the Term Loans on the Amendment No. 9 Effective Date."Amendment No.~~ 10" means Amendment No. 10 to Financing Agreement, dated as of May 27, 2022, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 10 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 10.

"Amendment No. ~~10 PIK Fee" means $1,780,000, which will be paid in kind by being added to the principal balance of the Term Loans on the Amendment No. 10 Effective Date~~11" means Amendment No. 11 to Financing Agreement, dated as of May 27, 2022, by and among the Loan Parties, the Administrative Agent and the Lenders.

"Amendment No. 11 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 11.

"Annovera" means (a) the ANNOVERA (segesterone acetate/ethinyl estradiol vaginal system) product approved for commercialization in the U.S. as of the Closing Date and (b) any other vaginal system being developed or commercialized by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) that contains segesterone acetate and/or ethinyl estradiol (and in the case of clause (a) and clause (b) above, including any of their respective derivatives, polymorphs, isomers, prodrugs, metabolites, esters, salts and other forms, formulations, and methods of delivery thereof), commercialized by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) in any country of the world under any brand name for any indication.

"Annovera Agreement" means that certain License Agreement, dated July 30, 2018, between Company and The Population Council, Inc., as amended from time to time in accordance with the terms hereof.

"Annovera Patents" means the U.S. and foreign patents and pending patent applications owned or in-licensed by Company or any of its Subsidiaries, now or in the future, that relate to, or otherwise may be useful in connection with, the research, development, manufacture, use, or sale of Annovera.

"Anti-Corruption Laws" means all Requirements of Law concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended, and the anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties do business.

"Anti-Terrorism Laws" means any Requirement of Law relating to terrorism or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Currency and Foreign Transactions Reporting Act (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959) (the "Bank Secrecy Act"), (c) the USA Patriot Act, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (e) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (f) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), or (g) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Applicable Margin" means (a) with respect to a Term Loan that is a ~~LIBOR~~SOFR Rate Loan, ~~7.75~~9.50% and (b) with respect to a Term Loan that is a Base Rate Loan, ~~6.75~~8.50%.

~~"Applicable Reserve Requirement" means, at any time, for any LIBOR Rate Loan, the maximum~~ rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or other applicable banking regulator having appropriate jurisdiction. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the applicable Adjusted LIBOR Rate or any other interest rate of a Loan is to be determined, or (b) any category of extensions of credit or other assets which include LIBOR Rate Loans. A LIBOR Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on LIBOR Rate Loans shall be adjusted automatically on and ~~as of the effective date of any change in the Applicable Reserve Requirement.~~

"Application Event" means the (a) occurrence of an Event of Default and (b) the election by Administrative Agent or the Required Lenders during the continuance of such Event of Default to require that payments and proceeds of Collateral be applied pursuant to Section 2.12(f).

"Asset Sale" means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or sublicense (including a Permitted Product Transaction) or other disposition to (other than to ~~a Loan Party~~the Borrower or a Guarantor Subsidiary), or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Loan Party's businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any Loan Party. For purposes of clarification, "Asset Sale" shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event, (d) any sale of accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Loan Party or Subsidiary of Borrower and (e) any royalty monetization transaction with respect to licenses or sublicenses of the intellectual property owned or controlled by the Company or any of its Subsidiaries, including but not limited to sales of royalty streams, royalty bonds and other royalty financings, synthetic royalty and revenue interest transactions and hybrid monetization transactions.

Notwithstanding the foregoing, none of the following items will be deemed to be an Asset Sale:

(i) an issuance of Capital Stock by a Subsidiary of the Company to the Company or to another Loan Party;

(ii) use or transfer of Cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(iii) the licensing or sublicensing of patents, trademarks, know-how or other intellectual property or general intangibles related thereto (in each case, other than a Permitted Product Transaction) in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries (*provided* that any exclusive license of patents that effectively constitutes a transfer of the related patent shall be deemed to be an Asset Sale) (a "Permitted License"); and

(iv) the lease, assignment or sublease of any real or personal property (other than a Permitted Product Transaction) in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries.

"Assignment Agreement" means an Assignment and Assumption Agreement substantially in the form of Exhibit C.~~"Assignment Letter" means that certain Assignment Side Letter, dated as of the date hereof, among Borrower, Administrative Agent and Lenders.~~

"Authorized Officer" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer or other substantially comparable title.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.20(d).

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, and (c) ~~the~~ Adjusted ~~LIBOR Rate~~Term SOFR (which rate shall be calculated based upon an Interest Period of three months and to be determined on a daily basis) plus 1%,~~ and (d) 5.20% per annum~~. Any change in the Prime Rate, the Federal Funds Effective Rate or ~~the~~ Adjusted ~~LIBOR Rate~~Term SOFR shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or ~~the~~ Adjusted ~~LIBOR Rate~~Term SOFR, respectively.

"Base Rate Loan" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"Base Rate Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR".

"Benchmark" means, initially, the Adjusted Term SOFR; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Adjusted Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.20(a).

"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent and the Company giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment; provided that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Company giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator ofsuch Benchmark (or the published component used in the calculation thereof) announcing that such

administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for theadministrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.20 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.20.

"Beneficiary" means Administrative Agent and each Lender.

"Bijuva" means (a) the BIJUVA (estradiol and progesterone) product approved for commercialization in the U.S. as of the Closing Date, and (b) any other product being developed or commercialized for the treatment of vasomotor symptoms by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) that contains estradiol and progesterone (and in the case of clause (a) and clause (b) above, including any of their respective derivatives, polymorphs, isomers, prodrugs, metabolites, esters, salts and other forms, formulations, and methods of delivery thereof), commercialized in any country of the world under any brand name.

"Bijuva Patents" means the U.S. and foreign patents and pending patent applications owned or in-licensed by Company or any of its Subsidiaries, now or in the future, that relate to, or otherwise may be useful in connection with, the research, development, manufacture, use, or sale of Bijuva..

"Blocked Person" means any Person:

(a) that is publicly identified (i) on the most current list of "Specially Designated Nationals and Blocked Persons" published by OFAC or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo program or (ii) as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Anti-Terrorism Law;

(b) that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above;

(c) which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; and

(d) that is affiliated or associated with a Person described in clauses (a), (b) or (c) above.

"Board of Directors" means, (a) with respect to any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower" has the meaning specified in the preamble hereto.

"Business Day" means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close, and (b) with respect to all notices, determinations, fundings ~~and~~, payments ~~in connection with the Adjusted LIBOR Rate or any LIBOR~~or continuation of, or determination of interest rate on, SOFR Rate Loans, ~~the term "Business Day" shall mean any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.~~any U.S. Government Securities Business Day.

"Capital Contribution Agreement" means the Capital Call Agreement, dated as of the Amendment No. 11 Effective Date, by and among the Investor (as defined therein), the Borrower and the Administrative Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (a) as lessee that, in conformity with GAAP as in effect on December 31, 2018, is or should be accounted for as a capital lease on the balance sheet of that Person or (b) as lessee which is a transaction of a type commonly known as a "synthetic lease" (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for federal income Tax purposes).

"Capital Stock" means any and all shares, equity interests, economic participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other written arrangements or rights to acquire any of the foregoing.

~~"CARES Act" means the Coronavirus Aid, Relief and Economic Security Act, as amended, and the related rules and regulations promulgated thereunder.~~

~~"CARES Act Loan" means any loan or other financial accommodation under the Payroll~~ Protection Program established pursuant to the CARES Act under 15 U.S.C. 636(a)(36) (as added to the Small Business Act by Section 1102 of the CARES Act); provided that (i) such Indebtedness is unsecured, (ii) the proceeds therefrom are used solely in a manner that is permitted by the CARES Act and (iii) the Loan Parties have fully complied with and satisfied all eligibility requirements under the ~~Payroll Protection Program established pursuant to the CARES Act to borrow such Indebtedness.~~

"Cash" means money, currency or a credit balance in any demand or Deposit Account.

"Cash Collateral Account" means that certain Deposit Account with Bank of America, N.A. identified by account number 4451020473.

"Cash Equivalents" means, as at any date of determination, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or

(ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A 1 from S&P or at least P 1 from Moody's; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A 1 from S&P or at least P 1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $500,000,000, and

(iii) has the highest rating obtainable from either S&P or Moody's.

"Certificate Regarding Non-Bank Status" means a certificate substantially in the form of Exhibit D.

"Change of Control" means, at any time, any of the following occurrences:

(a) prior to an IPO, the Permitted Holders shall cease to beneficially own and control, directly or indirectly at least (i) 50.1% on a fully diluted basis of the voting interests in the Capital Stock of Holdings or (ii) 25.0% on a fully diluted basis of the economic interests in the Capital Stock of Holdings;

(b) ~~(a)~~ following an IPO, any Person or "group" (within the meaning of Rules 13d 3 and 13d 5 under the Exchange Act) other than the Permitted Holders (i) shall have acquired beneficial ownership of ~~50.1~~(x) 33% or more on a fully diluted basis of the voting interest in the Capital Stock of ~~Borrower~~Holdings or (y) 25% or more on a fully diluted basis of the economic interest in the Capital Stock of Holdings or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Board of Directors (or similar governing body) of ~~Borrower;~~Holdings; or

(c) ~~(b)exceptpursuanttoatransactionpermittedbythisAgreement,~~ ~~Borrower~~Holdings shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of ~~each Loan Party; (c)~~ ~~the~~ majority of the seats (other than vacant seats) on the Board of Directors (or similar governing body) of Borrower cease to be occupied by Persons who either (i) were members of the Board of Directors of Borrower on the Closing Date, or (ii) were nominated for election by the Board of Directors of Borrower, a majority of whom were directors on the Closing Date or whose election or nomination for election was ~~previously approved by a majority of such directors; or~~the Borrower.

(d) any "change of control" or similar event shall occur under, and as defined in or set forth in the documents evidencing or governing, (i) the Capital Stock of Borrower if, as a result of such change of control or similar event, Borrower is required to make a payment of $5,000,000 or more or (ii) any Indebtedness in an individual principal amount of $5,000,000 or more owed by Borrower or ~~any of its Subsidiaries.~~

"Closing Date" means the date on which the Initial Term Loans are made, which is April 24, 2019.

"Closing Date Certificate" means a Closing Date Certificate substantially in the form of Exhibit E.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means, collectively, all of the real, personal and mixed property (including Capital Stock to the extent permitted under any Loan Document) and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person pursuant to the Collateral Documents as security for the Obligations.

"Collateral Access Agreement" means a collateral access agreement in form and substance reasonably satisfactory to Administrative Agent.

"Collateral Documents" means the Pledge and Security Agreement, the Mortgages, the Collateral Access Agreements, if any, any Control Agreement, and all other instruments, documents and agreements delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to Administrative Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Loan Party as security for the Obligations, in each case, as such Collateral Documents may be amended or otherwise modified from time to time, in accordance with and subject to the terms and conditions hereof and thereof.

"Commitment" means the Term Loan Commitment.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company" has the meaning specified in the preamble hereto.

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit B.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.19(c) and other technical, administrative or operational matters) that Administrative Agent, in consultation with the Company, decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent, in consultation with the Company, decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Administrative Agent, in consultation with the Company, decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contractual Obligation" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, license, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Administrative Agent, executed and delivered by Borrower or a Guarantor Subsidiary, Administrative Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

~~"Conversion/Continuation Date" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.~~

~~"Conversion/Continuation Notice" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.~~

"Controlled Investment Affiliate" means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Conversion/Continuation Date" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"Credit Date" means the date of a Credit Extension.

"Credit Extension" means the making of a Loan.

"Debtor Relief Law" means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

~~"Declined Proceeds" means the amount of Net Proceeds received in connection with a Waivable Mandatory Prepayment for which a Lender has elected to waive its right to prepayment in accordance with Section 2.11(b).~~

"Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Default Excess" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate outstanding principal amount of Term Loans of all Lenders (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Term Loans of such Defaulting Lender.

"Default Period" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default or violation of Section 9.5(c), as applicable, and ending on the earliest of the following dates: (a) the date on which all Commitments are cancelled or terminated and/or the

Obligations are declared or become immediately due and payable, in each case, in accordance with and subject to the terms and conditions of this Agreement, (b) the date on which (i) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with and subject to the terms and conditions of Section 2.9 or Section 2.10 or by a combination thereof), and (ii) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, (c) the date on which Company, Administrative Agent and Required Lenders waive all Funding Defaults of such Defaulting Lender in writing and (d) if such Defaulting Lender is a Defaulting Lender solely due to a violation of Section 9.5(c), the date on which Administrative Agent shall have waived all violations of Section 9.5(c) by such Defaulting Lender in writing.

"Default Rate" means any interest payable pursuant to Section 2.6.

"Defaulted Loan" has the meaning specified in Section 2.17.

"Defaulting Lender" has the meaning specified in Section 2.17. ~~"Default Rate" means any interest payable pursuant to Section 2.6.~~

"Delayed Draw A-1 Term Loan" means the Term Loan funded after the Closing Date pursuant to Section 2.1(a)(ii).

"Delayed Draw A-1 Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Delayed Draw Term Loan and "Delayed Draw A-1 Term Loan Commitments" means such commitments of all such Lenders in the aggregate. The ~~amount of each Lender's Delayed Draw A-1 Term Loan Commitment, if any, is set forth on Appendix A-3 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The~~ aggregate amount of the Delayed Draw A-1 Term Loan Commitments as of the ~~Closing~~Amendment No. 11 Effective Date is $~~50,000,000.~~0.

"Delayed Draw A-2 Term Loan" means the Term Loan funded after the Closing Date pursuant to Section 2.1(a)(iii).

"Delayed Draw A-2 Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Delayed Draw Term Loan and "Delayed Draw A-2 Term Loan Commitments" means such commitments of all such Lenders in the aggregate. ~~The amount of each Lender's Delayed Draw A-2 Term Loan Commitment, if any, is set forth on Appendix A-4 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof.~~ The aggregate amount of the Delayed Draw A-2 Term Loan Commitments as of the ~~Closing~~Amendment No. 11 Effective Date is $~~50,000,000.~~0.

"Delayed Draw Term Loan" means, collectively, the Delayed Draw A-1 Term Loan and the Delayed Draw A-2 Term Loan.

"Delayed Draw Term Loan Commitment" means, collectively, the Delayed Draw A-1 Term Loan Commitment and the Delayed Draw A-2 Term Loan Commitment.

"Delayed Draw Term Loan Commitment Period" means the time period commencing on the Closing Date through and including the Delayed Draw Term Loan Commitment Termination Date.

"Delayed Draw Commitment Termination Date" means the earliest to occur of (a) the date the Term Loan Commitments are permanently reduced to zero in accordance with and pursuant to Section 2.12(b) or

2.13, (b) the date of the termination of the Term Loan Commitments in accordance with and pursuant to Section 8.1, (c) solely in the case of the Delayed Draw A-1 Term Loan Commitment, September 22, 2020 (or such later date as may be consented to by the Required Lenders in their sole discretion) and (d) solely in the case of the Delayed Draw A-2 Term Loan Commitment, March 31, 2020 (or such later date as may be consented to by the Required Lenders in their sole discretion).

"Deposit Account" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Disputes" has the meaning set forth in Section 4.23(d).

"Disqualified Capital Stock" means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Capital Stock that would constitute Disqualified Capital Stock, in each case of clauses (a) through (d), prior to the date that is 91 days after the Term Loan Maturity Date.

"Disqualified Institution" means (a) any Person designated by Borrower as a "Disqualified Institution" by written notice delivered to Administrative Agent prior to the ~~Closing~~Amendment No. 11 Effective Date and consented to by Administrative Agent and the named Affiliates of each such Person which are clearly identifiable as such on the basis of each such Affiliate's name, (b) those Persons that are competitors of any Loan Party or any Subsidiary thereof, and its named Affiliates, in each case to the extent identified by Borrower to Administrative Agent in writing prior to the ~~Closing~~Amendment No. 11 Effective Date and consented to by the Administrative Agent, and the named Affiliates of each such Person which are clearly identifiable as such on the basis of such Affiliate's name or (c) any other Person as Borrower and Administrative Agent shall mutually agree after the Closing Date; provided, that (x) the Persons described in clause (b) above shall not include any Person that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and (y) "Disqualified Institution" shall exclude any Person that Borrower has designated as no longer being a "Disqualified Institution" by written notice delivered to Administrative Agent from time to time.[1]

"Dollars" and the sign "$" mean the lawful money of the United States of America.

"Eligible Assignee" means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which other entity extends credit or buys loans as one of its or its Affiliates' businesses, and (c) any other Person (other than a natural Person); provided, (i) neither Borrower nor any Affiliate of Borrower shall, in any event, be an Eligible Assignee, (ii) no Person owning or controlling any trade debt or Indebtedness of any Loan Party (other than the Obligations) or any Capital Stock of any Loan Party (in each case, unless approved by Administrative Agent) shall, in any event, be an Eligible Assignee and (iii) no Disqualified Institution shall be an Eligible Assignee so long as no Event of Default has occurred and is continuing.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA, other than a Multiemployer Plan, which is or (if liability to a Loan Party remains) was sponsored, maintained or contributed to by, or required to be contributed by, ~~Borrower, any of its~~ ~~Subsidiaries~~ a Loan Party or any of ~~their~~ its respective ERISA Affiliates.

"Environmental Claim" means any complaint, summons, citation, investigation, notice, directive, notice of violation, order, claim, demand, action, litigation, judicial or administrative proceeding,

[1] NTD: DQ list to be provided prior to closing.

judgment, letter or other communication from any Governmental Authority or any other Person, involving (a) any actual or alleged violation of any Environmental Law; (b) any Hazardous Material or any actual or alleged Hazardous Materials Activity; (c) injury to the environment, natural resource, any Person (including wrongful death) or property (real or personal) in connection with Hazardous Materials or actual or alleged violations of Environmental Laws; or (d) actual or alleged Releases or threatened Releases of Hazardous Materials either (i) on, at or migrating from any assets, properties or businesses currently or formerly owned or operated by any Loan Party or any of its Subsidiaries or any predecessor in interest, (ii) from adjoining properties or businesses, or (iii) onto any facilities which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries or any predecessor in interest.

"Environmental Laws" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, decrees, permits, licenses or binding determinations of any Governmental Authorizations, or any other requirements of Governmental Authorities relating to (a) the manufacture, generation, use, storage, transportation, treatment, disposal or Release of Hazardous Materials; or (b) occupational safety and health, industrial hygiene, land use or the protection of the environment, human, plant or animal health or welfare.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, losses (including monies paid in settlement), damages, punitive damages, natural resources damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred in connection with any Remedial Action, any Environmental Claim, or any other claim or demand by any Governmental Authority or any Person that relates to any actual or alleged violation of Environmental Laws, actual or alleged exposure or threatened exposure to Hazardous Materials, or any actual or alleged Release or threatened Release of Hazardous Materials.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"Equity Issuance" means, without duplication, either (a) the sale or issuance by Borrower of any shares of its Capital Stock or (b) the receipt by Borrower of any cash capital contributions in respect of Capital Stock of the Borrower.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA Affiliate" means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) solely for purposes of Section 412 of the Internal Revenue Code, any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person~~, any corporation described in clause (a) above or any trade or business described in clause (b) above~~ is a member.

"ERISA Event" means (a) a "reportable event" within the meaning of Section 4043(e) of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect

to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) [reserved]; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which ~~might~~ would constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on ~~Borrower, any of its Subsidiaries~~ a Loan Party or any of ~~their~~ its respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the withdrawal of ~~Borrower, any of its Subsidiaries~~ a Loan Party or any of ~~their~~ its respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by ~~Borrower, any of its Subsidiaries~~ a Loan Party or any of ~~their~~ its respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) [reserved]; (i) ~~the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan~~ other than a Multiemployer Plan or the assets ~~thereof, or against Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan~~[reserved]; (j) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (k) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan on the assets of a Loan Party.

"Event of Default" means each of the conditions or events set forth in Section 8.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Excluded Account" means (i) Deposit Accounts and Securities Accounts the balance of which consists exclusively of (a) withheld income Taxes and federal, state or local employment Taxes in such amounts as are required to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of the Company or any of its Subsidiaries, and (b) any payroll accounts, health care reimbursement accounts and employee benefits accounts, including any accounts containing amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of the Company or any of its Subsidiaries, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) tax accounts, fiduciary accounts and trust accounts and (iii) any Deposit Accounts and Securities Accounts, amounts on deposit in which do not exceed $100,000 individually or $500,000 in the aggregate at any one time, (iv) any Deposit Accounts that contain accounts receivable arising from any Governmental Payor where Administrative Agent may not under applicable Law obtain a security interest in or lien on such Deposit Account receiving the proceeds of such accounts receivable; provided, that amounts in such Deposit Account referred to in this subclause (iv) are automatically transferred on each Business Day into a Deposit Account that is not an Excluded Account, (v) the Cash Collateral Account, or (vi) the Deposit Account with Bank of America, N.A. identified by account number 4451288202.

"Excluded Taxes" has the meaning specified in Section 2.15(b).

"Existing Indebtedness" means Indebtedness and other obligations outstanding under that certain Credit and Security Agreement, dated as of May 1, 2018, between the Loan Parties, MidCap Financial Trust, as agent, and the lenders from time to time party thereto, as amended prior to the Closing Date.

"Extraordinary Receipts" means any cash received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.10(a) or (b) hereof), including, without limitation, (a) foreign, United States, state or local Tax refunds, (b) pension plan reversions, (c) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (including, without limitation, infringement proceeds, breach of contract claims, damages (including treble damages), settlement amounts and other payments) received by Company from any of its existing or future licensees under any license or settlement agreement or recovered by Company, in each case, pursuant to any enforcement of any of the Product Patents or any license agreement relating thereto against third parties), and (d) condemnation awards (and payments in lieu thereof), (e) indemnity payments not received in the ordinary course of business, and (f) any purchase price adjustment received in connection with any purchase agreement entered into in connection with the acquisition by a Loan Party of (i) any Capital Stock of another Person or (ii) all or substantially all of the assets of another Person.

"Facility Fee" has the meaning set forth in the Fee Letter.

"Fair Share" has the meaning specified in Section 7.2.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, in effect as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

"FDA" means the U.S. Food and Drug Administration or any successor thereto.

"FDA Laws" means all applicable statutes, rules, regulations, standards, guidelines, policies and orders and Requirements of Law administered, implemented, enforced or issued by FDA or any comparable U.S. Governmental Authority.

"Federal Funds Effective Rate" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day.

"Federal Healthcare Program Laws" means collectively, federal Medicare or federal or state Medicaid statutes, Sections 1128, 1128A, 1128B, 1128C or 1877 of the SSA (42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b, and 1320a-7c and 1395nn), the federal TRICARE statute (10 U.S.C. § 1071 et seq.), the civil False Claims Act of 1863 (31 U.S.C. § 3729 et seq.), criminal false claims statutes (e.g., 18 U.S.C. §§ 287 and 1001), the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.), HIPAA, or related regulations or other Requirements of Law that directly or indirectly govern the business of the Company operating within the health care industry, programs of Governmental Authorities related to healthcare, health care professionals or other health care participantsFDA Products, or relationships among health care providers, suppliers, distributors, manufacturers and patients, and the pricing, sale and reimbursement of health care items or services and sale thereof.

"Fee Letter" means the ~~letter~~Second Amended and Restated Fee Letter agreement, dated as of the ~~Closing~~Amendment No. 11 Effective Date, between Company and Administrative Agent, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions hereof and thereof.

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Borrower that such financial statements fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

"Flood Hazard Property" means any real property subject to a mortgage in favor of Administrative Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"~~Flow of Funds Agreement" means that certain Flow of Funds Agreement, dated as of the Closing Date, executed by each Loan Party, the Administrative Agent, each Lender and any other person party thereto, in form and substance reasonably satisfactory to the Administrative Agent, in connection with the disbursement of Loan proceeds in accordance with Section 2.2.~~Floor" means a rate of interest equal to 1.00%.

"Foreign Official" means any officer or employee of a non-U.S. government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

"Funding Default" has the meaning specified in Section 2.17.

"Funding Notice" means a notice substantially in the form of Exhibit A-1.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"Governmental Authority" means any federal, state, municipal, national or other U.S. government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court~~, in each case whether associated with a state of the United States, the United States, or a foreign entity or government~~ of competent jurisdiction.

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Governmental Payor" means Medicare, Medicaid, ~~TRICARE,~~ CHAMPVA, any state health plan adopted pursuant to Title XIX of the Social Security Act, any other state or federal health care program and any other Governmental Authority which maintains a payment or reimbursement program, and in which any Loan Party or Subsidiary thereof directly participates.

"Grantor" has the meaning specified in the Pledge and Security Agreement.

"Guaranteed Obligations" has the meaning specified in Section 7.1.

"Guarantor" means, subject to Section 5.10, each Subsidiary of Borrower and each other Person which guarantees, pursuant to Article VII or otherwise, all or any part of the Obligations.

"Guarantor Subsidiary" means each Guarantor.

"Guaranty" means (a) the guaranty of each Guarantor set forth in Article VII and (b) each other guaranty, in form and substance reasonably satisfactory to Administrative Agent, made by any other Guarantor for the benefit of the Secured Parties guaranteeing all or part of the Obligations.

"Hazardous Materials" means, regardless of amount or quantity, (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that is likely to cause immediately, or at some future time, harm to or have an adverse effect on, the environment or risk to human health or safety, including, without limitation, any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in any Environmental Law and which is present in the environment in such quantity or state that it contravenes any Environmental Law; (b) petroleum and its refined products;
(c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws; and (f) any substance or materials that are otherwise regulated under Environmental Law.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009)~~, and other state or local laws regulating the privacy and/or security of patient-identifying health care information, including with respect to notification of breach of privacy or security of such information,~~.

"Historical Financial Statements" means as of the Closing Date, (a) the audited consolidated financial statements of Borrower and its Subsidiaries, for the Fiscal Year ended December 31, 2018 consisting of consolidated balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, and (b) the internally prepared, unaudited consolidated financial statements of Borrower and its Subsidiaries for each fiscal month ended January 31, 2019, February 28, 2019 and March 31, 2019, consisting of a consolidated balance sheet and the related consolidated statements of income and cash flows for such fiscal month, in the case of clauses (a) and (b), certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

"Holdings" means Athene Parent, Inc., a Nevada corporation.

"Illegality Notice" has the meaning specified in Section 2.19(b).

"Imvexxy" means (a) the IMVEXXY (estradiol vaginal inserts) product approved for commercialization in the U.S. as of the Closing Date, and (b) any other vaginal product being developed or commercialized for the treatment of vaginal atrophy by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) that contains estradiol as the sole active ingredient (and in the case of clause (a) and clause (b) above, including any of their respective derivatives, polymorphs, isomers, prodrugs, metabolites, esters, salts and other forms, formulations, and methods of delivery thereof), commercialized in any country of the world under any brand name.

"Imvexxy Patents" means the U.S. and foreign patents and pending patent applications owned or in-licensed by Company or any of its Subsidiaries, now or in the future, that relate to, or otherwise may be useful in connection with, the research, development, manufacture, use, or sale of Imvexxy..

"Increased Cost Lenders" has the meaning specified in Section 2.18.

"Indebtedness" means, as applied to any Person, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP as in effect on December 31, 2018; (c) all obligations of such Person evidenced by notes, bonds or similar instruments or upon which interest payments are customarily paid and all obligations in respect of notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services, including any earn-outs or other deferred payment obligations in connection with an acquisition (excluding (i) trade payables incurred in the ordinary course of business and repayable in accordance with customary trade terms and (ii) accruals for payroll and other liabilities accrued in the ordinary course of business), in each case, if such obligation or earn-outs are classified as a liability on the balance sheet of such Person in accordance with GAAP; (e) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person; (f) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person;

(g) the face amount of any letter of credit or letter of guaranty issued, bankers' acceptances facilities, surety bonds and similar credit transactions issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (h) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (i) any guarantee of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged; (j) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, or capital contributions or otherwise) or (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (i) or (ii) of this clause (j), the primary purpose or intent thereof is as described in clause (i) above; and (k) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement, whether entered into for hedging or speculative purposes and (l) Disqualified Capital Stock. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly non-recourse to such Person.

"Indemnified Liabilities" means, collectively, any and all liabilities (including Environmental Liabilities and Costs), obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented out-of-pocket fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted in writing against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (b) the statements contained in the proposal letter delivered by any Lender to Company prior to the Closing Date with respect to the transactions contemplated by this Agreement; or (c) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Borrower or any of its Subsidiaries.

"Indemnified Taxes" means (a) Taxes (other than Excluded Taxes) imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitee" has the meaning specified in Section 10.3.

"Indemnitee Agent Party" has the meaning specified in Section 9.6.

"Initial Term Loan" means the Term Loan funded on the Closing Date pursuant to Section 2.1(a)(i).

"Initial Term Loan Commitment" means the commitment of a Lender to make or otherwise fund the Initial Term Loan and "Initial Term Loan Commitments" means such commitments of all such Lenders in the aggregate. ~~The amount of each Lender's Initial Term Loan Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof.~~ The aggregate amount of the Initial Term Loan Commitments as of the ~~Closing~~Amendment No. 11 Effective Date is $~~200,000,000.~~0.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

"Intercompany Subordination Agreement" means that certain Intercompany Subordination Agreement, dated as of the ~~date hereof~~Closing Date, made by the Loan Parties and their Subsidiaries in favor of Administrative Agent for the benefit of the Secured Parties in form and substance satisfactory to Administrative Agent.

"Interest Payment Date" means (a) with respect to any Base Rate Loan, the last Business Day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date; (b) with respect to any ~~LIBOR Rate Loan, (i) the last Business Day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date and (ii)~~SOFR Rate Loan, the last day of each Interest Period applicable to such Loan; and (c) with respect to each Loan, the final maturity date of the Loans (whether by scheduled maturity, acceleration or otherwise).

"Interest Period" means, in connection with a ~~LIBOR~~SOFR Rate Loan, an interest period of three months (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clauses (b)(iii) and (b)(iv) of this definition, end on the last Business Day of a calendar month; and (iii) no Interest Period with respect to any portion of any Term Loan shall extend beyond Term Loan Maturity Date.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with Borrower's and its Subsidiaries' operations, (b) approved by Administrative Agent, and (c) not for speculative purposes.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Investment" means (a) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, any of the securities or Capital Stock or all or substantially all of the assets of any other Person (or of any division or business line of such other Person); (b) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Borrower from any Person, of any Capital Stock of such Person; (c) any direct or indirect loan, advance or capital contributions by Borrower or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) any direct or indirect Guarantee of any obligations of any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

"Investors" means (a) the Sponsor and (b) the Shareholders.

"IPO" means (a) the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common equity interests in Holdings, the Borrower or a parent entity of Holdings, (b) any transaction or series of transactions that results in any common equity interests of the IPO entity being publicly-traded on any United States national securities exchange or over the counter market, or any analogous exchange or market in Canada, Ireland, the United Kingdom or any country of the European Union or (c) the acquisition, purchase, merger or combination of Holdings, the Borrower or a parent entity of Holdings, by, or with, a publicly-traded special acquisition company that (i) is an entity organized or existing under the laws of the United States, any State thereof or the District of Columbia, (ii) prior to the IPO, shall have engaged in no business or activities in any material respect other than activities related to becoming and acting as a publicly traded special acquisition company and entry into the IPO and (iii) immediately prior to the IPO, shall have no material assets other than cash and Cash Equivalents.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"Lender" means each lender listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto in accordance with and subject to the terms and conditions hereof pursuant to an Assignment Agreement other than any Person that ceases to be a party hereto pursuant to any Assignment Agreement.

"Liabilities" means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

~~"LIBOR Rate Loan" means a Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.~~

"Lien" means (a) any lien, mortgage, pledge, assignment, hypothec, deed of trust, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (b) in the case of securities or Capital Stock, any purchase option, call or similar right of a third party with respect to such securities or Capital Stock.

"Loan" means any Term Loan.

"Loan Account" means an account maintained hereunder by Administrative Agent on its books of account at the Payment Office, and with respect to Company, in which it will be charged with the Term Loan made to, and all other Obligations incurred by the Loan Parties.

"Loan Document" means any of this Agreement, the Notes, if any, the Collateral Documents, the Fee Letter, ~~the Flow of Funds Agreement,~~ any Guaranty, the Intercompany Subordination Agreement, the Pledge Agreement and all other material documents, instruments or agreements executed and delivered by a Loan Party for the benefit of Administrative Agent or any Lender in connection herewith.

"Loan Party" means ~~Company~~Holdings, the Borrower or any Guarantor.

"Loan Party Partner" has the meaning set forth in Section 4.33(a). "Make Whole" has the meaning specified in the Fee Letter.

"Margin Stock" has the meaning specified in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

~~"Marsh Premiums" means premiums due under that certain Premium Finance Agreement between AFCO Premium Credit LLC and the Borrower dated September 7, 2021.~~

"Material Adverse Effect" means a material adverse effect on (a) the business operations, properties, assets, condition (financial or otherwise) or liabilities of Borrower and its Subsidiaries taken as a whole; (b) the ability of any Loan Party to fully and timely perform its obligations under any Loan Document to which it is a party; (c) the legality, validity, binding effect, or enforceability against a Loan Party of a Loan Document to which it is a party; (d) the Collateral or the validity, perfection or priority of Administrative Agent's Liens on the Collateral except as expressly permitted in the Collateral Documents; and (e) the rights, remedies and benefits available to, or conferred upon, Administrative Agent and any Lender or any other Secured Party under any Loan Document~~; (f) any Product; and (g) the Product Patents for a particular Product (taken as a whole); or (h) any Registration by the FDA~~.

"Material Contract" means ~~any contract or other written arrangement to which Borrower or any of~~

~~its Subsidiaries is a party (other than the Loan Documents), now or in the future, for which breach, non-performance, cancellation or failure to renew would reasonably be expected to have a Material Adverse Effect, which, as of the Closing Date, are those contracts and arrangements listed on Schedule 4.15.1~~that certain License Agreement, July 30, 2018, by and between The Population Council, Inc., and the Borrower, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Material Regulatory Liabilities" means (a)(i) any Liabilities arising from the violation of FDA Laws, Public Health Laws, Federal Health Care Program Laws, ~~and other applicable comparable Requirements of Law, or the terms, conditions of or requirements applicable to any Registrations (including costs of actions required under applicable Requirements of Law,~~ including FDA Laws and Federal Health Care Program Laws, or necessary to remedy any violation of any terms or conditions applicable to any Registrations), including, but not limited to, withdrawal of approval, recall, revocation, suspension, import detention and seizure of any Product, and (ii) any loss of recurring annual revenues as a result of any loss, suspension or limitation of any Registrations, which, in the case of the foregoing

~~1 Agreements that should be listed on the schedule include (i) the two commercial supply agreements between the Company and Catalent Pharma Solutions, Inc. (dated April 20, 2016 and June 24, 2016) for Invexxy and Bijuva, (ii) the manufacturing agreement between the Company and QPharma AB for the manufacture and supply of Annovera, and (iii) the long term supply agreement (if executed prior to close) between the Company and Crystal Pharma SAU for the supply of Nesterone.~~

clauses (i) and (ii), ~~exceed $1,000,000,~~ individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or (b) any Material Adverse Effect.

~~"Merger Agreement" shall have the meaning set forth in Amendment No. 10.~~

~~"Milestone" has the meaning set forth in Section 5.15.~~

~~"Milestone Letter" means the letter, with respect to the consideration in connection with the Milestones, delivered by the Borrower to the Administrative Agent on or before the Amendment No. 9 Effective Date.~~

"Moody's" means Moody's Investor Services, Inc.

"Mortgage" means a mortgage, deed of trust or deed to secure debt, in form and substance satisfactory to Administrative Agent, made by a Loan Party in favor of Administrative Agent for the benefit of the Secured Parties, securing the Obligations and delivered to Administrative Agent.

"Multiemployer Plan" means any ~~Employee Benefit Plan which is a~~ "multiemployer plan" as defined in Section 3(37) of ERISA.

"Net Proceeds" means (a) with respect to any Asset Sale, an amount equal to: (i) all Cash payments received by Borrower or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide costs or expenses incurred in connection with such Asset Sale that are properly attributable to such Asset Sale to the extent paid or payable to non-Affiliates, including (A) income or gains Taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale during the Tax period the sale occurs, (B) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (C) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Borrower or any of its Subsidiaries in connection with such Asset Sale , and (D) any reasonable and documented out-of-pocket fees or expenses incurred in connection therewith; provided that upon release of any such reserve, the amount released shall be considered Net Proceeds; and (b) with respect to any insurance, condemnation, taking or other casualty proceeds, an amount equal to: (i) any Cash payments or proceeds received by Borrower or any of its Subsidiaries (A) under any casualty or business interruption insurance policies in respect of any

covered loss thereunder, or (B) as a result of the condemnation or taking of any assets of Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (A) any actual costs or expenses incurred by Borrower or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Borrower or such Subsidiary in respect thereof, and (B) any bona fide costs or expenses incurred in connection with any sale of such assets as referred to in clause (b)(i)(B) of this definition to the extent paid or payable to non-Affiliates, including income Taxes payable as a result of any gain recognized in connection therewith and properly attributable thereto.

"Non-US Lender" has the meaning specified in Section 2.15(e)(i).

"Note" means a promissory note evidencing the Initial Term Loan or a Delayed Draw Term Loan, as applicable.

"Notice" means a Funding Notice or a Conversion/Continuation Notice.

""Obligations"" means all obligations of every nature of each Loan Party and its Subsidiaries from time to time owed to the Administrative Agent (including former Administrative Agents), the Lenders or any of them, under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding), fees (including, (i) ~~the Amendment No. 9 PIK Fee but excluding the Waivable Portion of Amendment No. 9 PIK Fee and (ii) the Amendment No. 10 PIK Fee~~Exit Fee (as defined in the Fee Letter) and (ii) the Make Whole), expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise (including obligations of performance).

"OFAC" has the meaning specified in the definition of "Anti-Terrorism Laws".

"OFAC Sanctions Programs" means (a) the Requirements of Law and Executive Orders administered by OFAC, including but not limited to, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended,
(c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Other Connection Taxes" has the meaning specified therefor in Section 2.15(b). "Other Taxes" has the meaning specified in Section 2.15(c).

"Participant Register" has the meaning specified in Section 10.6(h)(ii).

"PATRIOT Act" has the meaning specified in Section 4.29.

"Payment Office" means Administrative Agent's office located at 888 7th Avenue, 35th Floor New York, New York 10106, or such other office or offices of Administrative Agent as may be designated in writing from time to time by Administrative Agent to Collateral Agent and Company.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"Perfection Certificate" means a certificate in form reasonably satisfactory to Administrative Agent that provides information with respect to the assets of each Loan Party.

"Periodic Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR".

"Permitted Acquisition" means any acquisition by Company or any of its wholly owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

(a) ~~immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;~~the EBITDA of the target, on a pro forma basis after giving effect to the acquisition (as certified by an Authorized Officer of the Borrower and supported by documentation reasonably acceptable to the Administrative Agent), shall be less than ($2,000,000) for the most recently ended period of 12 consecutive months;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(c) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Guarantor Subsidiary of Company in connection with such acquisition shall be owned 100% by Company or a Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Company, each of the actions set forth in Section 5.10 and/or Section 5.11, as applicable;

(d) ~~Borrower and its Subsidiaries shall be in compliance with the covenants set forth~~ in Section 6.8 on a pro forma basis after giving effect to such acquisition as of the last day of the Fiscal ~~Quarter most recently ended;~~[reserved];

(e) ~~Company shall have delivered to Administrative Agent at least 10 days (or such~~ shorter period as agreed to by Administrative Agent in writing) prior to such proposed acquisition, such information and documents that Administrative Agent may reasonably request, including, without limitation, financial information with respect to such acquired assets and drafts of the respective ~~acquisition agreements related thereto;~~[reserved];

(f) ~~the acquisition shall have been approved by the Board of Directors or other~~ governing body or controlling Person of the Person acquired or the Person from whom such assets or ~~division is acquired; and~~[reserved]; and

(g) the total consideration ~~(excluding any portion thereof paid with proceeds of an Equity Issuance)~~ ~~paid in connection with all such acquisitions~~ ~~consummated since the Closing Date shall not exceed $50,000,000.~~paid in connection with all such acquisitions shall be paid with proceeds of an Equity Issuance (excluding the proceeds of any Permitted Cure Equity and/or Capital Contribution (as defined in the Capital Contribution Agreement)).

"Permitted Cure Equity" means Qualified Capital Stock of the Borrower.

"Permitted Holder" means each of the Investors and their respective Controlled Investment Affiliates.

"Permitted Indebtedness" means:

(a) the Obligations;

(b) Permitted Intercompany Investments;

(c) Indebtedness incurred by Borrower or any of its Subsidiaries arising from agreements providing for indemnification or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Company or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or Asset Sales permitted hereunder;

(d) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business and Indebtedness constituting guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower and its Subsidiaries;

(e) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(f) Indebtedness described in Schedule 6.1, and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(g) Indebtedness in an aggregate amount not to exceed at any time $1,000,000 with respect to (i) Capital Leases and (ii) purchase money Indebtedness (including any Indebtedness acquired in connection with a Permitted Acquisition); provided that any such Indebtedness shall be secured only by the asset subject to such Capital Lease or by the asset acquired in connection with the incurrence of such Indebtedness;

(h) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(i) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions;

(j) Indebtedness of a Person whose assets or Capital Stock are acquired by the Borrower or any of its Subsidiaries in a Permitted Acquisition in an aggregate amount not to exceed $1,000,000 at any one time outstanding; provided, that such Indebtedness (i) is either purchase money Indebtedness or a Capital Lease with respect to equipment or mortgage financing with respect to a facility, (ii) was in existence prior to the date of such Permitted Acquisition, and (iii) was not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(k) unsecured Indebtedness owing to the seller party to a Permitted Acquisition that is incurred by the applicable Loan Party in connection with the consummation of one or more Permitted Acquisitions so long as (i) the aggregate principal amount for all such Indebtedness does not exceed ~~$10,000,000~~1,000,000 at any one time outstanding, and (ii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent, and (iii) such Indebtedness is otherwise on terms and conditions (including all economic terms and the absence of covenants) reasonably acceptable to the Administrative Agent;

(l) other Indebtedness of Borrower and its Subsidiaries, which is unsecured and subordinated to the Obligations in a manner satisfactory to Administrative Agent in an aggregate amount not to exceed at any time $5,000,000;

(m) Indebtedness incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations;

(n) ~~Indebtedness under the CARES Act Loan in an aggregate principal amount not to exceed $6,477,094 outstanding at any time;~~[reserved]; and

(o) Indebtedness of the Loan Parties in respect of credit card programs in the ordinary course of business in an aggregate amount not to exceed $200,000 at any time outstanding; and

(p) Indebtedness incurred by a Loan Party or any of its Subsidiaries arising from (i) customary indemnification obligations or (ii) revenue guarantees or other similar obligations, in each case as (A) provided under the definitive documentation related to the VitaCare Sale and (B) consented to by the Administrative Agent in writing ~~(such consent not to be unreasonably withheld, delayed or~~ conditioned (it being understood and agreed by the Administrative Agent and the Lenders that such consent shall not require any economic consideration, other consideration or any repayment of the Obligations (other than any payment required by either Section 2.8(y) or Section 2.10(a)(ii)(A), as applicable) as a condition thereof)), except that no consent will be required in the case of clause (ii) ~~above if such obligations are satisfied solely in Capital Stock~~.

"Permitted Intercompany Investments" means Investments by (a) ~~a Loan Party~~the Borrower or a Guarantor Subsidiary to or in the Borrower or another ~~Loan Party~~Guarantor Subsidiary, (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, and (c) a Subsidiary that is not a Loan Party to or in a ~~Loan Party~~the Borrower or a Guarantor Subsidiary, so long as, in the case of a loan or an advance, the parties thereto are party to an Intercompany Subordination Agreement.

"Permitted Investments" means:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the ~~Closing~~Amendment No. 11 Effective Date in any Subsidiary;

(c) Permitted Intercompany Investments;

(d) loans and advances to employees of Borrower and its Subsidiaries (i) made in the ordinary course of business, and (ii) any refinancings of such loans after the ~~Closing~~Amendment No. 11 Effective Date, in each case, in an aggregate amount not to exceed $1,000,000;

(e) Permitted Acquisitions;

(f) Investments described in Schedule 6.7 as of the ~~Closing~~Amendment No. 11 Effective Date;

(g) any Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business or received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(h) loans and advances by Borrower or any of its Subsidiaries in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Junior Payments in respect thereof), Restricted Junior Payments to the extent permitted to be made to Borrower or any of its Subsidiaries in accordance with Section 6.5(a), (b) or (c); and

(i) so long as no Event of Default has occurred and is continuing or would result therefrom, other Investments (other than (x) any Investment constituting a disposition or contribution of the Products or the Product Patents and (y) any Investment in or to Holdings) in an aggregate amount not to exceed $~~10,000,000~~1,000,000 at any time outstanding~~; and(j) any contribution of VitaCare Business Assets by a Loan Party to VitaCare in connection with the VitaCare Sale~~.

"Permitted Liens" means:

(a) Liens in favor of Administrative Agent for the benefit of Secured Parties granted pursuant to any Loan Document;

(b) Liens for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and reserves required by GAAP have been made, so long as the aggregate amount of such Taxes does not exceed $1,000,000;

(c) statutory Liens of landlords, banks (and rights of set off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business for amounts not yet overdue;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations, so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) Liens described in Schedule 6.2; provided that any such Lien shall only secure the Indebtedness that it secures on the ~~Closing~~Amendment No. 11 Effective Date and any Permitted Refinancing Indebtedness in respect thereof;

(l) Liens securing Capital Leases or purchase money Indebtedness permitted pursuant to clause (g) of the definition of Permitted Indebtedness; provided, any such Lien shall encumber only the asset subject to such Capital Lease or the asset acquired with the proceeds of such Indebtedness;

(m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;

(n) Liens assumed by Borrower and its Subsidiaries in connection with a Permitted Acquisition that secure Indebtedness permitted by clause (j) of the definition of Permitted Indebtedness;

(o) ~~other~~(i) Liens incurred in the ordinary course of business of the Company or any Subsidiary of the Company with respect to obligations that do not exceed $1,000,000 at any one time outstanding and (ii) Permitted Licenses and Permitted Product Transactions;

(p) Liens securing any judgments, writs or warrants of attachment or similar process not constituting an Event of Default under Section 8.1(h);

(q) Liens that are contractual rights of setoff relating to purchase orders entered into with customers, vendors or suppliers of such Person in the ordinary course of business; and

(r) Liens on the Cash Collateral Account securing Permitted Indebtedness described under clause (o) of the definition thereof.

"Permitted Product Transaction" means a transaction that includes the granting of a license or sublicense for a territory outside of the United States of any rights under any Product Patents or Registrations pursuant to a Product Agreement.

"Permitted Refinancing Indebtedness" means any Indebtedness of the Company or any of its Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness of the Company or any of its Subsidiaries; *provided* that:

(a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);

(b) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(c) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Obligations, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the Obligations on terms at least as favorable to the Administrative Agent and the Lenders as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; and

(d) such Indebtedness is incurred either by the Company or by the Subsidiary who is the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Pledge Agreement" means the Pledge Agreement executed by Holdings in favor of Administrative Agent for the benefit of the Secured Parties, with respect to the pledge of 100% of the Capital Stock of the Borrower, as it may be amended, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions hereof and thereof.

"Pledge and Security Agreement" means the Pledge and Security Agreement executed by Grantors in favor of Administrative Agent for the benefit of the Secured Parties, as it may be amended, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions hereof and thereof.

~~"Prepayment Premium" has the meaning specified in the Fee letter. [On and after the Amendment No. 9 Effective Date, references in the Financing Agreement to the "Prepayment Premium" shall mean "$0".]~~

"Prime Rate" means the rate of interest quoted in *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Any Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate. Notwithstanding anything herein to the contrary, if the Prime Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Principal Office" means, for Administrative Agent, such Person's "Principal Office" as set forth on Appendix ~~B~~A, or such other office as such Person may from time to time designate in writing in accordance with Section 10.1 to Company and each Lender.

"Products" means Annovera, Bijuva and Imvexxy.

"Product Agreement" means any agreement entered into between Company or any of its Subsidiaries with another Person that includes the granting of a license or sublicense of any rights under any Product Patents or Registrations that allows such Person to develop or commercialize a Product outside the United States.

"Product Patents" means the Annovera Patents, Bijuva Patents and Imvexxy Patents.

"Product Revenue" means, for any period, (a) the consolidated gross revenues of Borrower and its Subsidiaries generated solely through the commercial sale of Products by Borrower and its Subsidiaries during such period, less, without duplication, (b)(i) trade, quantity and cash discounts allowed by Borrower, (ii) discounts, refunds, rebates, charge backs, retroactive price adjustments and any other allowances which effectively reduce net selling price, (iii) product returns and allowances, (iv) allowances for shipping or other distribution expenses, (~~iv~~v) set-offs and counterclaims, and (~~v~~vi) any other similar and customary deductions used by Borrower in determining net revenues, all, in respect of (a) and (b), as determined in accordance with GAAP and calculated on a basis consistent with the Historical Financial Statements delivered to Administrative Agent prior to the Closing Date.

"Pro Rata Share" means, with respect to:

(a) ~~(i) a Lender's obligation to make the Initial Term Loan and such Lender's right to receive payment of the Facility Fee in respect thereof, the percentage obtained by dividing (A) such Lender's Initial Term Loan Commitment by (B) the Total Initial Term Loan Commitment; (ii) a Lender's obligation to make a Delayed Draw A-1 Term Loan and such Lender's right to receive payment of the Facility Fee in respect thereof, the percentage obtained by dividing (A) such Lender's Delayed Draw A-1 Term Loan Commitment by (B) the aggregate amount of the Lenders' Delayed Draw A-1 Term Loan Commitments; and (iii) a Lender's obligation to make a Delayed Draw A-2 Term Loan and such Lender's right to receive payment of the Facility Fee in respect thereof, the percentage obtained by dividing (A) such Lender's Delayed Draw A-1 Term Loan Commitment by (B) the aggregate amount of the Lenders' Delayed Draw A-2 Term Loan Commitments;~~ [reserved];

(b) a Lender's right to receive payments of interest, fees (other than the Facility Fee) and principal with respect to a Term Loan, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the aggregate unpaid principal amount of the Term Loan; and

(c) all other matters the percentage obtained by dividing (i) the sum of such Lender's Delayed Draw Term Loan Commitment and the unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the sum of the Total Delayed Draw Term Loan Commitment and the aggregate unpaid principal amount of the Term Loan.

"Protective Advances" has the meaning specified in Section 9.11.

"Public Health Laws" means all Requirements of Law applicable to the business of the Company and relating to the procurement, development, clinical and non-clinical evaluation, product approval or licensure, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, labeling, promotion, or post market requirements of any drug, biologic or other product ~~(including, without limitation, any ingredient or component of the foregoing products)~~ subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and the Public Health Service Act (42 U.S.C. et seq.)~~, including without limitation~~ and the regulations promulgated by the FDA at Title 21 of the Code of Federal Regulations ~~and guidance, compliance policies and other guidelines issued by the FDA~~.

"Qualified Capital Stock" means, with respect to any Person, all Capital Stock of such Person that is not Disqualified Capital Stock.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted Cash and Cash Equivalents (other than restrictions created by the Collateral Documents) of the Loan Parties that is in Deposit Accounts or in Securities Accounts, or any combination thereof, which such Deposit Account or Securities Account is subject to a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

"Recipient" means Administrative Agent or any Lender.

"Register" has the meaning specified in Section 2.3(b).

"Registrations" shall mean all authorizations, approvals, licenses, permits, certificates, or exemptions of or issued by any Governmental Authority (including pre-market approval applications, pre-market notifications, investigational new drug applications, product recertifications, manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals or their foreign equivalent), and all applications for any of the foregoing,; provided that they are required ~~for the research, development, manufacture, commercialization, distribution, marketing, storage, transportation, pricing, Government Authority reimbursement,~~and necessary for the operation of the business of the Company in connection with the use and sale of Products.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Regulatory Action" means an administrative or regulatory enforcement action, proceeding or investigation, warning letter, untitled letter, Form 483 inspectional observations or other written notice ~~of~~by a Governmental Authority of an FDA violation ~~letter~~, recall, seizure, Section 305 notice or other similar written communication, or consent decree, issued by the FDA.

"Reinvestment Amounts" has the meaning specified term in Section 2.10(a)(ii).

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York and/or the Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York, or, in each case, any successor thereto.

"Remedial Action" means all actions taken to (a) correct or address any actual or threatened non-compliance with Environmental Law, (b) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (c) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (d) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (e) perform any other actions authorized or required by Environmental Law or Governmental Authority.

"Replacement Lender" has the meaning specified in Section 2.18.

"Required Lenders" means Lenders whose Pro Rata Share (calculated in accordance with clause

(c) of the definition thereof) aggregate at least 50.1%.

"Required Prepayment Date" has the meaning specified in Section 2.11(a).

"Requirements of Law" means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, ~~standards,~~ rules and regulations, ~~guidelines, ordinances,~~ orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and ~~the interpretation or administration thereof by, and other determinations, directives,~~ requirements ~~or requests~~ of, any Governmental Authority, in each case having the force of law and appropriate jurisdiction over and that are applicable to ~~or~~and binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Restricted Junior Payment" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Borrower now or hereafter outstanding, except a dividend payable solely in shares of Capital Stock to the holders of that class, together with any payment or distribution pursuant to a "plan of division" under the Delaware Limited Liability Act or any comparable transaction under any similar law; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Borrower or any of its Subsidiaries that is not a Loan Party now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Borrower or any of its Subsidiaries that is not a Loan Party now or hereafter outstanding and (d) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to, any subordinated Indebtedness.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

~~"SBA" means the U.S. Small Business Administration.~~

"Secured Parties" has the meaning assigned to that term in the Pledge and Security Agreement.

"Securities Account" means a securities account (as defined in the UCC).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

~~"Small Business Act" means the Small Business Act (15 U.S. Code Chapter 14A - Aid to Small Business).~~"Shareholders" means each of EW Healthcare Partner Fund 2, L.P., a Delaware limited partnership, and Majorelle International S.à.r.l., a Luxembourg *société à responsabilité limitée*.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Rate Loan" means a Loan bearing interest at a rate determined by reference to Adjusted Term SOFR (other than pursuant to clause (c) of the definition of "Base Rate").

"Solvent" means, with respect to any Loan Party, that as of the date of determination, both (a)(i) the sum of such Loan Party's debt (including contingent liabilities) does not exceed the present fair saleable value of such Loan Party's present assets; (ii) such Loan Party's capital is not unreasonably small in relation to its business as contemplated on the Closing Date or with respect to any transaction contemplated or undertaken after the Closing Date; and (iii) such Person has not incurred and does not intend to incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Deposit Accounts" means each Deposit Account (other than any Excluded Account) of the Loan Parties held at Bank of America, N.A.

~~"Specified Payables" means the difference between (i) the aggregate amount of all trade payables aged in excess of (A) 60 days past due (other than the Marsh Premiums) and all book overdrafts and (ii) $1,500,000; in accordance with their customary practice and as reflected on the most recent Accounts Payable report provided under Section 5.1(s).~~

"Specified Product Component" means that portion of each of Annovera, Bijuva and Imvexxy described in clause (a) of each definition thereof.

"Sponsor" means, collectively, Essex Woodlands Services Co. Inc., together with its Controlled Investment Affiliates and funds managed or advised by it or its Controlled Investment Affiliates (in each case, other than any portfolio companies).

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any

contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding), imposed by any Governmental Authority, including all interest, penalties, additions to tax or other liabilities with respect thereto.

"Term Loan" means, collectively, the Initial Term Loan and each Delayed Draw Term Loan.

"Term Loan Commitment" means, collectively, the Initial Term Loan Commitment and the Delayed Draw Term Loan Commitments.

""Term Loan Maturity Date"" means the earlier of (a) ~~July 13, 2022~~ December 31, 2023 and (b) the date that the Term Loan shall become due and payable in full hereunder, whether by acceleration or otherwise.

"Term SOFR" means,

(a) for any calculation with respect to a SOFR Rate Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Adjustment" means, for any calculation, a percentage per annum as set forth below for the applicable Interest Period therefor:

| Interest Period | Percentage |
|---|---|
| Three months | 0.15% |

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Terminated Lender" has the meaning specified in Section 2.18.

"Total Delayed Draw Term Loan Commitment" means the sum of the amounts of the Lenders' Delayed Draw Term Loan Commitments.

"Total Initial Term Loan Commitment" means the sum of the amounts of the Lenders' Initial Term Loan Commitments.

"Transaction Costs" means the reasonable and documented fees, costs and expenses payable by Borrower or any of its Subsidiaries on or before the Closing Date in connection with the transactions contemplated by the Loan Documents.

"Type of Loan" means with respect to any Term Loan, a Base Rate Loan or a ~~LIBOR~~SOFR Rate Loan.

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"U.S." or "United States" means the United States of America.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"VitaCare" means VitaCare Prescription Services, Inc., a Florida corporation.

~~"VitaCare Business Assets" means the assets and property (other than cash or Cash Equivalents) that are part of the Loan Parties' VitaCare prescription services business as of the Amendment No. 8 Effective Date or are acquired by such business after such date in the ordinary course of business.~~

~~"VitaCare Business Asset Excess Amount" means an amount equal to the excess, if any, of (i) the aggregate amount paid by the Loan Parties to acquire VitaCare Business Assets after the Amendment No. 8 Effective Date over (ii) $5,000,000.~~

~~"VitaCare Sale" has the meaning set forth in Section 6.9(b)(i).~~

"Waivable Mandatory Prepayment" has the meaning specified in Section 2.11(b).

~~"Waivable Portion of Amendment No. 9 PIK Fee" means a portion of the Amendment No. 9 PIK Fee equal to $16,000,000.~~

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(b) the then outstanding principal amount of such Indebtedness.

Section 1.2 Accounting and Other Terms.

(a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to Sections 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with any reconciliation statements provided for in Section 5.1(f), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. Notwithstanding the foregoing, or anything else to the contrary in this Agreement or in any other Loan Document to the contrary for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the UCC as in effect from time to time in the State of New York and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the UCC as in effect in the State of New York on the ~~date hereof~~Amendment No. 11 Effective Date shall continue to have the same meaning notwithstanding any replacement or amendment of such statute.

(c) For purposes of determining compliance with any incurrence or expenditure tests set forth in this Agreement, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars ($)) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other recognized and publicly available service for displaying exchange rates as may be reasonably selected by Administrative Agent or, in the event no such service is available, on such other basis as is reasonably satisfactory to Administrative Agent) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other recognized and publicly available service for displaying exchange rates as may be reasonably selected by Administrative Agent or, in the event no such service is available, on such other basis as is reasonably satisfactory to Administrative Agent) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time).

Section 1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such

word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations or Guaranteed Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, including any ~~Prepayment Premium~~Make Whole, (ii) all costs, expenses, or indemnities payable pursuant to Section 10.2 or Section

10.3 of this Agreement that have accrued and are unpaid regardless of whether demand has been made therefor and (iii) all fees, charges, expense reimbursement and other Obligations that have accrued hereunder or under any other Loan Document and are unpaid and are payable hereunder and (b) the receipt by Administrative Agent of cash collateral from any Loan Party in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to an Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agents reasonably determine is appropriate to secure such contingent Obligations. Notwithstanding anything in the Agreement to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be enacted, adopted, issued, phased in or effective after the date of this Agreement regardless of the date enacted, adopted, issued, phased in or effective. Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in any Loan Document) and (b) any reference to any law or regulation shall (i) include all statutory and regulatory provisions consolidating, amending, replacing or interpreting or supplementing such law or regulation, and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.3 shall apply, *mutatis mutandis*, to all Loan Documents.

Section 1.4 Time References. Unless otherwise indicated herein, all references to time of day refer to Central Standard Time or Central daylight saving time, as in effect in Dallas, Texas on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to Administrative Agent or any Lender, such period shall in any event consist of at least one full day.

Section 1.5 Rates. Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.20, will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or

composition of any Conforming Changes. Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to Company. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to Company, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

LOANS

Section 2.1 Term Loans.

(a) Loan Commitment. Subject to the terms and conditions hereof:

(i) each Lender severally agrees to make, on the Closing Date, an Initial Term Loan to Company in an amount equal to such Lender's Initial Term Loan Commitment;

(ii) each Lender severally agrees to make, after the Closing Date and at any time prior to the Delayed Draw Term Loan Commitment Termination Date, a Delayed Draw A-1 Term Loan to Company in an aggregate amount equal to such Lender's Delayed Draw A-1 Term Loan Commitment; and

(iii) each Lender severally agrees to make, after the Closing Date and at any time prior to the Delayed Draw Term Loan Commitment Termination Date, a Delayed Draw A-2 Term Loan to Company in an aggregate amount equal to such Lender's Delayed Draw A-2 Term Loan Commitment.

Company may make only one borrowing under the Initial Term Loan Commitment which shall be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.9, all amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Term Loan Maturity Date. Each Lender's Initial Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Initial Term Loan Commitment on such date in an amount equal to such Lender's Pro Rata Share (calculated in accordance with clause (a)(i) of the definition thereof) of such funded Initial Term Loan. Each Lender's Delayed Draw A-1 Term Loan Commitment shall be permanently reduced immediately and without further action upon the funding of each Delayed Draw A-1 Term Loan after the Closing Date in an amount equal to such Lender's Pro Rata Share (calculated in accordance with clause (a)(ii) of the definition thereof) of such funded Delayed Draw A-1 Term Loan. Each Lender's Delayed Draw A-1 Term Loan Commitment shall terminate immediately and without further action on the earlier to occur of (i) the Term Loan Maturity Date and (ii) the applicable Delayed Draw Term Loan Commitment Termination Date after giving effect to the funding of such Lender's Delayed Draw A-1 Term Loan Commitment, if any, on such date. Each Lender's Delayed Draw A-2 Term Loan Commitment shall be permanently reduced immediately and without further action upon the funding of each Delayed Draw A-2 Term Loan after the Closing Date in an amount equal to such Lender's Pro Rata Share (calculated in accordance with clause (a)(iii) of the definition thereof) of such funded Delayed Draw A-2 Term Loan. Each Lender's Delayed Draw A-2 Term Loan Commitment shall terminate immediately and without further action on the earlier to occur of (i) the Term Loan Maturity Date and (ii) the applicable Delayed Draw Term Loan Commitment Termination Date after giving effect to the funding of such Lender's Delayed Draw A-2 Term Loan Commitment, if any, on such date.

As of the Amendment No. 11 Effective Date (x) the outstanding principal amount of the Term Loan (after giving effect to the payment-in-kind of the Amendment No. 10 PIK Fee (as defined in Amendment No. 10)) is $90,780,000 and no right of offset, defense, counterclaim or objection exists in favor of any Loan Party as against Administrative Agent or any Lender with respect to the Obligations, and (y) there are no fees owing on or after the Amendment No. 11 Effective Date other than those expressly contemplated herein or in the Fee Letter.

(b) Borrowing Mechanics for Term Loans.

(i) Company shall deliver to Administrative Agent a fully executed Funding Notice no later than three Business Days prior to the Closing Date (or such shorter period permitted by Administrative Agent), with respect to Term Loans made on the Closing Date. Following the Closing Date (and subject to the conditions set forth in Section 3.2), whenever Company desires that Lenders make a Delayed Draw Term Loan, Company shall deliver to Administrative Agent a fully executed and delivered Funding Notice at least 15 Business Days in advance of the proposed Credit Date (or such shorter period consented to by Administrative Agent). Except as otherwise provided herein, a Funding Notice for a Term Loan that is a ~~LIBOR~~SOFR Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to make a borrowing in accordance therewith. Promptly upon receipt by Administrative Agent of any such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing. Administrative Agent and Lenders (A) may act without liability upon the basis of written or facsimile notice believed by Administrative Agent in good faith to be from Company (or from any Authorized Officer thereof designated in writing purportedly from Company to Administrative Agent), (B) shall be entitled to rely conclusively on any Authorized Officer's authority to request a Term Loan on behalf of Company until Administrative Agent receives written notice to the contrary, and (C) shall have no duty to verify the authenticity of the signature appearing on any written Funding Notice.

(ii) Each Lender shall make its Initial Term Loan available to Administrative Agent not later than 12:00 p.m. on the applicable Credit Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans available to Company on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at Administrative Agent's Principal Office or to such other account as may be designated in writing to Administrative Agent by Company.

(c) During the Delayed Draw Term Loan Commitment Period, drawings under the (i) Delayed Draw A-1 Term Loan Commitment shall be (A) made on not more than 1 date and (B) made in an aggregate amount not exceeding $50,000,000 and (ii) Delayed Draw A-2 Term Loan Commitment shall be (A) made on not more than 1 date and (B) made in an aggregate amount not exceeding $50,000,000, and in each case for clauses (i) and (ii) shall be subject to the satisfaction of the conditions set forth in Section 3.2.

(d) Pro Rata Shares; Availability of Funds.

(i) Pro Rata Shares. All Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(ii) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date,

Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Company a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Company and Company shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.1(d)(ii) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments hereunder or to prejudice any rights that Company may have against any Lender as a result of any default by such Lender hereunder.

Section 2.2 Use of Proceeds. The proceeds of the Term Loans made on and after the Closing Date shall be applied by Company for working capital, capital expenditures and general corporate purposes of Borrower and its Subsidiaries. No portion of the proceeds of the Term Loan shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

Section 2.3 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Lender, including the amounts of the Term Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any Term Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the principal amount of the Term Loans (and stated interest therein) of each Lender from time to time (the "Register"). The Register shall be available for inspection by Company at any reasonable time and from time to time upon reasonable prior notice, and Administrative Agent shall notify Company in writing following any updates to the Register made from time to time. Administrative Agent shall record in the Register the Term Loans, and each repayment or prepayment in respect of the principal amount of the Term Loans, and any such recordation shall be conclusive (absent manifest error) and binding on Company and each Lender, and Company, Administrative Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to and in accordance with the terms and conditions hereof as a Lender hereunder for any purposes of this Agreement; provided, failure to make any such recordation, or any error in such recordation, or any failure to provide notice of any updates to the Register, shall not affect Company's Obligations in respect of any Term Loan. Company hereby designates the entity serving as Administrative Agent to serve as Company's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.3, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Company's receipt of such notice) a Note or Notes.

Section 2.4 Interest.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(ii) if a ~~LIBOR~~SOFR Rate Loan, at ~~the~~ Adjusted ~~LIBOR Rate~~Term SOFR plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any ~~LIBOR~~SOFR Rate Loan, shall be selected by Company and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) In connection with ~~LIBOR~~SOFR Rate Loans there shall be no more than five Interest Periods outstanding at any time. In the event Company fails to specify between a Base Rate Loan or a ~~LIBOR~~SOFR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a ~~LIBOR~~SOFR Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Company fails to specify an Interest Period for any ~~LIBOR~~SOFR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Company shall be deemed to have selected an Interest Period of three months. At any time that a Default or an Event of Default has occurred and is continuing, Company no longer shall have the option to request that any portion of the Loans be a ~~LIBOR~~SOFR Rate Loan and such ~~LIBOR~~SOFR Rate Loans shall automatically convert to Base Rate Loans on the last day of the then current Interest Period. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the ~~LIBOR~~SOFR Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing) to Company and each Lender.

(d) Interest payable hereunder shall be computed on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a ~~LIBOR~~SOFR Rate Loan, the date of conversion of such ~~LIBOR~~SOFR Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a ~~LIBOR~~SOFR Rate Loan, the date of conversion of such Base Rate Loan to such ~~LIBOR~~SOFR Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

~~(e)~~ (e) Interest on each Term Loan shall be payable in cash and in arrears (i) on each Interest Payment Date, (ii) upon any prepayment of that Term Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid and (~~ii~~iii) on the Term Loan Maturity Date.~~(f) From~~; provided, that, from and after the Amendment No. ~~9 Effective Date, interest will accrue and be payable on the Amendment No. 9 PIK Fee other than the Waivable Portion of the Amendment No. 9 PIK Fee.~~11 Effective Date, interest shall be paid by capitalizing such interest and adding such capitalized interest to the then outstanding principal amount of the Term Loan (such interest, "PIK Interest"). Any interest to be so capitalized pursuant to this clause (e) shall be capitalized on each Interest Payment Date and added to

the then outstanding principal amount of the Term Loan and, thereafter, shall bear interest as provided hereunder as if it had originally been part of the outstanding principal of the Term Loan.

(g) From and after the Amendment No. 10 Effective Date interest will accrue and be ~~payable on the Amendment No. 10 PIK Fee~~

(f) In connection with the use or administration of Term SOFR, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Administrative Agent will promptly notify Company and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

Section 2.5 Conversion/Continuation.

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, Company shall have the option:

(i) to convert at any time all or any part of any Term Loan equal to $5,000,000 and integral multiples of $1,000,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a ~~LIBOR~~SOFR Rate Loan may only be converted on the expiration of the Interest Period applicable to such ~~LIBOR~~SOFR Rate Loan unless Company shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any ~~LIBOR~~SOFR Rate Loan, to continue all or any portion of such Loan equal to $5,000,000 and integral multiples of $1,000,000 in excess of that amount as a ~~LIBOR~~SOFR Rate Loan.

(b) Company shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a ~~LIBOR~~SOFR Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any ~~LIBOR~~SOFR Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to effect a conversion or continuation in accordance therewith.

Section 2.6 Default Interest. Upon Company's receipt of written notice thereof from Administrative Agent following the occurrence and during the continuance of an Event of Default, the principal amount of all Term Loans outstanding and, to the extent permitted by applicable law, any accrued and unpaid interest payments on the Term Loans or any fees or other amounts owed hereunder (~~including~~excluding any ~~Prepayment Premium~~Make Whole, if applicable), shall from and after the first date of the occurrence of such Event of Default bear interest (including post petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the Term Loans. All interest payable at the Default Rate shall be payable in cash on demand. Payment or acceptance of the Default Rate of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Default or Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

Section 2.7 Fees.

(a) Company agrees to pay to Administrative Agent all fees payable by it in the Fee Letter in the amounts and at the times specified therein.

(b) All fees referred to in Section 2.7(a) shall be calculated on the basis of a 360 day year and the actual number of days elapsed.

Section 2.8 Repayment of Term Loans. ~~(x) On the Amendment No. 8 Effective Date the~~ Borrower shall repay $15,000,000 in principal amount of the Term Loan, (y) on March 31, 2021 the Borrower shall repay $35,000,000 in principal amount of the Term Loan so long as the Borrower shall not have made a mandatory prepayment in accordance with Section 2.10(a)(ii)(A) prior to such date, and (z) commencing on March 31, 2022 and on the last day of each Fiscal Quarter ending thereafter, the Borrower shall repay the principal amount of the Term Loan in the aggregate amounts set forth below, in each case which payments shall be applied as follows: (a) first, the principal of the Initial Term Loan until paid in full, (b) second, the principal of the Delayed Draw A-1 Term Loan until paid in full and (c) ~~third, the principal of the Delayed Draw A-2 Term Loan until paid in full.~~

| ~~Fiscal Quarter Ending~~ | ~~Term Loan Repayment~~ |
|---|---|
| ~~March 31, 2022~~ | ~~$5,000,000~~ |
| ~~June 30, 2022~~ | ~~$5,000,000~~ |
| ~~September 30, 2022~~ | ~~$5,000,000~~ |
| ~~December 31, 2022~~ | ~~$10,000,000~~ |
| ~~March 31, 2023~~ | ~~$10,000,000~~ |
| ~~June 30, 2023~~ | ~~$41,250,000~~ |
| ~~September 30, 2023~~ | ~~$41,250,000~~ |
| ~~December 31, 2023~~ | ~~$41,250,000~~ |
| ~~March 31, 2024~~ | ~~$41,250,000~~ |

~~Notwithstanding the foregoing, the~~The Term Loan, together with all other amounts owed hereunder with respect thereto, shall be paid in full no later than the Term Loan Maturity Date."

Section 2.9 Voluntary Prepayments and Commitment Reductions.

(a) Voluntary Prepayments.

(i) Subject to the terms of the Fee Letter, Company may prepay at any time the Term Loan on any Business Day in whole or in part (together with any amounts due pursuant to Section 2.19(c)), in an aggregate minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) All such prepayments shall be made (A) upon not less than one Business Day's prior written notice in the case of Base Rate Loans and (B) upon not less than three Business Days' prior written notice in the case of ~~LIBOR~~SOFR Rate Loans, in each case given to Administrative Agent by 3:00 p.m. on the date required (and Administrative Agent will promptly transmit such notice to each Lender). Upon the giving of any such notice, the principal amount of the Term Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied to the Term Loans as directed by the Borrower.

(b) Voluntary Commitment Reductions.

(i) Company may, upon not less than three Business Days' prior written to Administrative Agent (which original written notice Administrative Agent will promptly transmit to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part any unused portion of the Delayed Draw Term Loan Commitments; provided, any such partial reduction of the

Delayed Draw Term Loan Commitments shall be in an aggregate minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) Company's notice to Administrative Agent shall designate (A) the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction and (B) whether such termination or reduction is for the Delayed Draw A-1 Term Loan Commitment and/or the Delayed Draw A-2 Term Loan Commitment, and such termination or reduction of the Delayed Draw Term Loan Commitments shall be effective on the date specified in Company's notice and shall reduce the Delayed Draw Term Loan of each Lender proportionately to its Pro Rata Share thereof.

Section 2.10 Mandatory Prepayments.

(a) Asset Sales.

(i) No later than the fifth Business Day following the date of receipt by any Loan Party of any Net Proceeds (excluding any such Net Proceeds constituting recurring volume- or sales-based payments made in the ordinary course of business) from one or more Asset Sales constituting a Permitted Product Transaction in excess of $~~40,000,000~~2,500,000 in the aggregate in any Fiscal Year for all such Permitted Product Transactions, Company shall prepay the Term Loan as set forth in Section 2.11(a) in an aggregate amount equal to such Net Proceeds in excess of $~~40,000,000.~~ 2,500,000.

(ii) (A) ~~On the same Business Day of the receipt by any Loan Party of proceeds from a VitaCare Sale, Company shall prepay the principal amount of the Term Loans as set forth in Section 2.11(a)(ii) in an amount equal to (1) the first $120,000,000 of Net Proceeds from such sale and (2) all Net Proceeds in excess of $135,000,000 from such sale ; and~~[Reserved]; and

(B) No later than the fifth Business Day following the date of receipt by any Loan Party of any Net Proceeds from any ~~other Asset Sales (which, for the avoidance of doubt, shall not include the VitaCare Sale)~~Asset Sales that do not constitute Permitted Product Transactions in excess of $~~5,000,000~~2,500,000 in the aggregate in any Fiscal Year ~~that do not constitute a Permitted Product Transaction~~, Company shall prepay the Term Loans as set forth in Section 2.11(a)(i) in an aggregate amount equal to such Net Proceeds in excess of $~~5,000,000~~2,500,000 in such Fiscal Year; provided, solely in the case of this clause (B), so long as (i) no Default or Event of Default shall have occurred and be continuing, (ii) Company has delivered Administrative Agent prior written notice of Company's intention to apply such monies (the "Reinvestment Amounts") to reinvest in or to the costs of purchase of other assets used or useful in the business of the Loan Parties including capital expenditures, (iii) the monies are held in a Deposit Account subject to a Control Agreement, and (iv) the Loan Parties complete such reinvestment or purchase within 365 days after the initial receipt of such monies, the Loan Parties shall have the option to apply such monies to the reinvestment in or the costs of purchase of other assets used or useful in the business of the Loan Parties (including capital expenditures) unless and to the extent that such applicable period shall have expired without such reinvestment or purchase being made or completed, in which case, any such amounts not so used to reinvest or purchase shall be paid to Administrative Agent and applied in accordance with Section 2.11(a)(i).

(iii) Nothing contained in this Section 2.10(a) shall permit Borrower or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.9.

(b) Insurance/Condemnation Proceeds. No later than the fifth Business Day following the date of receipt by any Loan Party, or Administrative Agent as loss payee, of any Net Proceeds from insurance or any condemnation, taking or other casualty in excess of $~~5,000,000~~2,500,000 in the aggregate in any Fiscal Year, Company shall prepay the Term Loan in an aggregate amount equal to such Net Proceeds in excess of $~~5,000,000~~2,500,000 in the aggregate in any Fiscal Year; provided, (i) so long as no Default or Event of Default shall have occurred and be continuing, (ii) Company has delivered Administrative Agent prior written notice of Company's intention to apply the Reinvestment Amounts to reinvest in or the costs of purchase of other assets used or useful in the business of the Loan

Parties (including capital expenditures), (iii) the monies are held in a Deposit Account subject to a Control Agreement, and (iv) the Loan Parties complete such reinvestment or purchase within 365 days after the initial receipt of such monies, the Loan Parties shall have the option to apply such monies to the reinvestment in or costs of purchase of other assets used or useful in the business of the Loan Parties (including capital expenditures) unless and to the extent that such applicable period shall have expired without such reinvestment or purchase being made or completed, in which case, any such amounts not so used to reinvest or purchase shall be paid to Administrative Agent and applied in accordance with Section 2.11(a).

(c) Issuance of Debt. On the date of receipt by Borrower or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of Borrower or any of its Subsidiaries (in each case, other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), Company shall prepay the Term Loans as set forth in Section 2.11(a) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses.

(d) ~~Extraordinary Receipts. On the date of receipt by Borrower or any of its Subsidiaries of any Extraordinary Receipts in excess of $5,000,000 in the aggregate in any Fiscal Year, Company shall prepay the Terms Loan as set forth in Section 2.11(a) in the amount of such Extraordinary Receipts in excess of $5,000,000.~~[Reserved].

(e) Prepayment Certificate. Concurrently with any prepayment of the Term Loan pursuant to Section 2.10(a) through Section 2.10(~~d~~c), Company shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds and compensation owing to Lenders pursuant to the Fee Letter, if any, as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Loans, and Company shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

Section 2.11 Application of Prepayments.

(a) Application of Prepayments of Term Loans. Except in connection with any Waivable Mandatory Prepayment provided for in Section 2.11(b), so long as no Application Event has occurred and is continuing:

~~(i)~~ any mandatory prepayment of any Loan pursuant to Section ~~2.10 (other than Section 2.10(a)(ii)(A)),~~2.10, in each case, shall be applied as follows:

*first*, to prepay accrued and unpaid interest on the Term Loan;

*second*, to pay any ~~Prepayment Premium~~Make Whole payable thereon; and

*third*, to prepay ~~(A) first,~~ the principal of the ~~Initial Term Loan to the~~ installments thereof on a pro rata basis until paid in full, ~~(B) second, the principal of the Delayed Draw A-1 Term Loan to the installments thereof on a pro rata basis until paid in full and (C) third, the principal of the Delayed Draw A-2 Term Loan to the installments thereof on a pro rata basis until paid in full~~Term Loan; and

~~(ii)~~ any mandatory prepayment of any Loan pursuant to Section ~~2.10(a)(ii)(A) shall be applied as follows:~~

~~*first*, to prepay (A) first, the principal of the Initial Term Loan to the installments thereof on a pro rata basis until paid in full, (B) second, the principal of the Delayed Draw A-1 Term Loan to the installments thereof on a pro rata basis until paid in full and (C) third, the principal of the Delayed Draw A-2 Term Loan to the installments thereof on a pro rata basis until paid in full~~

~~*second*, to prepay accrued and unpaid interest on the Term Loan; and~~

~~*third*, to pay any Prepayment Premium payable thereon.~~

(b) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Company is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Term Loans pursuant to ~~Section 2.8 and~~ Section 2.10, not less than three Business Days prior to the date (the "Required Prepayment Date") on which Company is required to make such Waivable Mandatory Prepayment, Company shall notify Administrative Agent of the amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding an outstanding Term Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to Company and Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Company and Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Company shall pay to Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that pro rata portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Term Loans of such Lenders (which prepayment shall be applied in accordance with Section 2.11(a)), and (ii) to the extent of any excess, to Company for working capital and general corporate purposes.

(c) At any time an Application Event has occurred and is continuing, all payments shall be applied pursuant to Section 2.12(f). Nothing contained herein shall modify the provisions of Section 2.12(b) regarding the requirement that all prepayments be accompanied by accrued interest on the principal amount being prepaid to the date of such prepayment and any applicable ~~Prepayment Premium~~Make Whole, or any requirement otherwise contained herein to pay all other amounts as the same become due and payable in accordance with and subject to the terms and conditions herein.

Section 2.12 General Provisions Regarding Payments.

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent, for the account of Lenders, not later than 3:00 p.m. to Administrative Agent's Account; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Company on the next Business Day unless otherwise consented to by Administrative Agent.

(b) All payments in respect of the principal amount of any Term Loan shall be accompanied by payment of accrued and unpaid interest on the principal amount being repaid or prepaid, any applicable ~~Prepayment Premium~~Make Whole and all other amounts due and payable hereunder with respect to the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Subject to the provisos set forth in the definition of "Interest Period", whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(e) Administrative Agent shall deem any payment by or on behalf of Company hereunder that is not made in same day funds prior to 3:00 p.m. to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Company and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with and subject to the terms and conditions of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate determined pursuant to Section 2.6 from the date such amount was due and payable until the date such amount is paid in full.

(f) At any time an Application Event has occurred and is continuing, or the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Administrative Agent hereunder or under any Collateral Document in respect of any of the Obligations, including, but not limited to all proceeds received by Administrative Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows:

*first*, ratably to pay the Obligations in respect of any fees (other than any ~~Prepayment Premium~~Make Whole), expense reimbursements, indemnities and other amounts then due and payable to the Administrative Agent until paid in full;

*second*, ratably to pay interest then due and payable in respect of Protective Advances until paid in full;

*third*, ratably to pay principal of Protective Advances then due and payable until paid in full;

*fourth*, ratably to pay the Obligations in respect of any fees (other than any ~~Prepayment Premium~~Make Whole) and indemnities then due and payable to the Lenders ~~with a Term Loan Commitment~~ until paid in full;

*fifth*, ratably to pay interest then due and payable in respect of the Term Loan until paid in full;

*sixth*, ratably to pay ~~(A) first,~~ the principal of the ~~Initial Term Loan until paid in full, (B) second, the principal of the Delayed Draw A-1 Term Loan until paid in full and (C) third, the principal of the Delayed Draw A-2~~ Term Loan until paid in full;

*seventh*, ratably to pay the Obligations in respect of any ~~Prepayment Premium~~Make Whole then due and payable to the Lenders ~~with a Term Loan Commitment~~ until paid in full;

*eighth*, to the ratable payment of all other Obligations then due and payable until paid in full; and

*ninth*, to Company or as otherwise directed by applicable law.

(g) For purposes of Section 2.12(f) (other than clause eighth, of Section 2.12(f)), "paid in full" means payment in cash of all amounts due and payable under the Loan Documents in accordance with and subject to the terms and conditions thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(h) In the event of a direct conflict between the priority provisions of Section 2.12(f) and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 2.12(f) shall control and govern.

(i) Borrower hereby authorizes Administrative Agent to charge Company's accounts with Administrative Agent or any of its Affiliates in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose). The Lenders and Company also hereby authorize Administrative Agent to, and Administrative Agent may, from time to time upon prior notice to Company, charge the Loan Account with any amount due and payable by Company under any Loan Document. Each of the Lenders and Company agrees that Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 3.2 have been satisfied. Any amount charged to the Loan Account shall be deemed a Loan hereunder made by the Lenders to Company, funded by Administrative Agent on behalf of the Lenders and subject to Section 2.2. The Lenders and Company confirm that any charges which Administrative Agent may so make to the Loan Account as herein provided will be made as an accommodation to Company and solely at Administrative Agent's discretion, provided that Administrative Agent shall from time to time upon the request of Collateral Agent, charge the Loan Account of Company with any amount due and payable under any Loan Document.

(j) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any ~~LIBOR~~SOFR Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

Section 2.13 Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Term Loans made and applied in accordance with the terms hereof), through the exercise of any right of set off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender having Term Loans, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders having Term Loans in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery,

but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set off or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 2.14 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.15 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order) by any Governmental Authority having appropriate jurisdiction, or any determination of a court or Governmental Authority having appropriate jurisdiction, in each case that becomes effective after the ~~date hereof~~Amendment No. 11 Effective Date, or compliance by such Lender with any guideline, request or directive issued or made after the ~~date hereof~~Amendment No. 11 Effective Date by any central bank or other governmental or quasi-Governmental Authority (whether or not having the force of law): (i) subjects such Recipient (or its applicable lending office) to any additional Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii)-(iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any of the other Loan Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to ~~LIBOR~~SOFR Rate Loans that are reflected in the definition of ~~Adjusted LIBOR Rate~~Term SOFR); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender or such other Recipient (or its applicable lending office) with respect thereto; then, in any such case, Company shall promptly pay to such Lender or such other Recipient, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender or such other Recipient for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender or such other Recipient shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender or such other Recipient under this Section 2.14(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined that the adoption, effectiveness, phase in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, in each case, having appropriate jurisdiction or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Term Loans or other obligations hereunder with respect to the Term Loan to a

level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Lender of the statement referred to in the next sentence, Company shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after Tax basis for such reduction. Such Lender shall deliver to Company (with a copy to Administrative Agent) in accordance with Section 10.1 a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.14(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

Section 2.15 Taxes; Withholding, etc.

(a) For purpose of this Section, the term "applicable law" includes FATCA.

(b) Withholding of Taxes. All sums payable by or on account of any Obligation of any Loan Party hereunder and under the other Loan Documents shall (except to the extent required by applicable law) be paid free and clear of, and without any deduction or withholding on account of, any Tax, other than, to the extent required by applicable law, any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by the Recipient's net income (however denominated), franchise Taxes, and branch profits Taxes, imposed on the Recipient, in each case, (A) by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (B) as the result of any other present or former connection between such Recipient and the jurisdiction imposing such Tax, other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document ("Other Connection Taxes"), (ii) in the case of a Lender, United States federal income withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender becomes a party hereto (other than pursuant to an assignment request by the Company under Section 2.18) or such Lender changes its lending office, except that this clause (ii) shall not apply to the extent that, pursuant to this Section 2.15 amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, ~~(iii)~~ Taxes attributable to such recipient Lender's failure to comply with Section 2.15(e) and (iv) withholding Taxes imposed under FATCA (all such Taxes described in clauses (i)-(iv) above, collectively or individually, "Excluded Taxes"). If any Loan Party or any other Person is required by law to make any deduction or withholding on account of any Indemnified Tax from any sum paid or payable by or on account of any obligation of any Loan Party to Administrative Agent or any Lender under any of the Loan Documents: (1) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (2) Company shall pay any such Tax in accordance with applicable law, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (3) the sum payable by such Loan Party shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including such deductions or withholdings applicable to additional sums payable under this Section), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (4) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, Company shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Other Taxes. The Loan Parties shall pay to the relevant Governmental Authorities any present or future stamp, court, intangible, recording, filing or similar Taxes or documentary Taxes or any other excise or property Taxes that arise from any payment made hereunder or from the execution, delivery or registration, performance or enforcement of, or from the receipt or perfection of a security interest under or otherwise with respect to, this Agreement or any other Loan Document ("Other Taxes"), provided that the definition of "Other Taxes" shall exclude Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.18). Within thirty days after paying any such Other Taxes, each Loan Party shall deliver to Administrative Agent and any Lender evidence satisfactory to Administrative Agent and Lenders that such Other Taxes have been paid to the relevant Governmental Authority.

(d) Tax Indemnification. The Loan Parties hereby jointly and severally indemnify and agree to hold Administrative Agent and Lender harmless from and against all Indemnified Taxes (including, without limitation, Indemnified Taxes imposed or asserted on or attributable to any amounts payable under this Section 2.15) paid by Administrative Agent or Lender or required to be withheld or deducted from a payment to Administrative Agent or such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Such indemnification shall be paid within ten days from the date on which Administrative Agent or Lender makes written demand therefor specifying in reasonable detail the nature and amount of such Indemnified Taxes and such written demand shall be conclusive absent manifest error.

(e) Evidence of Exemption From or Reduction of U.S. Withholding Tax.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to Company and Administrative Agent, at the time or times reasonably requested by Company or Administrative Agent, properly completed and executed documentation reasonably requested by Company or Administrative Agent as will permit such payments to be made without, or at a reduced rate, of withholding. In addition, any Lender, if reasonably requested by Company or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Company or Administrative Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements.

(ii) Each Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a "Non-US Lender") shall deliver to Administrative Agent and Company, on or about the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or about the date such Person becomes a Lender hereunder, and at such other times as may be necessary in the determination of Administrative Agent or Company (in its reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8IMY (with appropriate attachments), W-8BEN, W-8BEN-E or W-8ECI (or any successor forms), as applicable, properly completed and duly executed by such Lender to establish that such Lender is not subject to, or eligible for a reduction of, deduction or withholding of United States federal income Tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents, and (ii) if such Lender is claiming exemption from United States federal income Tax under Section 871(h) or 881(c) of the Internal Revenue Code, a Certificate Regarding Non-Bank Status (to the effect that such Non-US Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code), properly completed and duly executed by such Lender. Each Lender required to deliver any forms or certificates with respect to United States federal income Tax withholding matters pursuant to this Section 2.15(e) hereby agrees, from time to time after the initial delivery by such Lender of such forms or certificates, whenever a lapse in time or change in

circumstances renders such forms or certificates obsolete or inaccurate in any material respect, that such Lender shall deliver to Administrative Agent and Company, two new original copies of Internal Revenue Service Form W-8IMY (with appropriate attachments thereto), W-8BEN, W-8BEN-E or W-8ECI, as applicable, and, if applicable, a Certificate Regarding Non-Bank Status (or any successor forms), and other supplementary documentation reasonably requested by Borrower or Administrative Agent, as the case may be, properly completed and duly executed by such Lender, or notify Administrative Agent and Company of its legal inability to deliver any such forms or certificates. Notwithstanding the above, a Non-US Lender shall not be required to deliver any form pursuant to Section 2.15(e)(ii) that such Non-US Lender is not legally able to deliver.

(iii) If a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Company and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Company or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Company or Administrative Agent as may be necessary for Company and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.15(e)(iii), FATCA shall include any amendments made to FATCA after the date of this Agreement. Notwithstanding the above, a Lender shall not be required to deliver any form or other form of documentation pursuant to this Section 2.15(e)(iii) that such Non-US Lender is not legally able to deliver.

(iv) Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income Tax purposes shall deliver to Administrative Agent and Company, on or about the Closing Date (in the case of each such Lender listed on the signature pages hereof on the Closing Date) or on or about the date such Person becomes a Lender hereunder, and at such other times as may be necessary in the determination of Administrative Agent or Company (in its reasonable exercise of its discretion), two original copies of Internal Revenue Service Form W-9 (or any successor forms) properly completed and duly executed by such Lender to establish that such Lender is not subject to United States backup withholding Taxes with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents.

(f) Treatment of Certain Refunds. If a recipient determines in its discretion exercised in good faith that it has received a refund of any Taxes (including any Tax credit in lieu of a refund) that were indemnified by any Loan Party or with respect to which a Loan Party paid additional amounts pursuant to this Section, it shall pay the amount equal to such refund to the applicable Loan Party (but only to the extent of indemnity payments or additional amounts actually paid by such Loan Party with respect to the Taxes giving rise to the refund), net of all out-of-pocket expenses (including Taxes) incurred by such recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Loan Parties shall, upon request by the recipient, repay to the recipient such amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no recipient shall be required to pay any amount to a Loan Party if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Administrative Agent or any Lender be required to make its Tax returns (or any other information relating to its Taxes that it deems confidential) available to any Loan Party.

(g) Survival. Each party's obligations under this Section 2.15 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by or replacement of a Lender, the termination of the Loan or Commitment, and the repayment, satisfaction, discharge or full payment of any obligations under any Loan Document.

Section 2.16 Obligation to Mitigate. Each Lender agrees that after the officer of such Lender responsible for administering its Term Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.13, 2.14, 2.15 or 2.19, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, and to the extent it would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.13, 2.14, 2.15 or 2.19 would be materially reduced and if, as determined by such Lender in its sole discretion exercised in good faith, the making, issuing, funding or maintaining of such Term Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Term Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.16 unless Company agrees to pay all reasonable incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this Section 2.16 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Company (with a copy to Administrative Agent) shall be conclusive absent manifest error.

Section 2.17 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender violates any provision of Section 9.5(c), or, other than at the direction or request of any regulatory agency or authority having appropriate jurisdiction, defaults (in each case, a "Defaulting Lender") in its obligation to fund (a "Funding Default") a Term Loan (in each case, a "Defaulted Loan"), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Loan Documents; and (b) to the extent permitted by applicable law, until such time as the Default Excess, if any, with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Term Loans shall, if Administrative Agent so directs at the time of making such voluntary prepayment, be applied to Term Loans of other Lenders as if such Defaulting Lender had no Term Loans outstanding and the outstanding Term Loans of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Term Loans shall, if Administrative Agent so directs at the time of making such mandatory prepayment, be applied to the Term Loans of other Lenders (but not to the Term Loans of such Defaulting Lender) as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender, it being understood and agreed that Company shall be entitled to retain any portion of any mandatory prepayment of the Term Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (b). No Term Loan Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.17, performance by Company of its obligations hereunder and the other Loan Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.17. The rights and remedies against a Defaulting Lender under this Section 2.17 are in addition to other rights and remedies which Company may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default or violation of Section 9.5(c).

Section 2.18 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "Increased Cost Lender") shall give notice to Company that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.14, 2.15 or 2.16, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Company's request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after Company's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Administrative Agent and Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each a "Non-Consenting Lender") whose consent is required shall not have been obtained; then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the "Terminated Lender"), Administrative Agent may (which, in the case of an Increased-Cost Lender, only after receiving written request from Company to remove such Increased-Cost Lender), by giving written notice to Company and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loans in full to one or more Eligible Assignees (each a "Replacement Lender") in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender and (B) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.7 (except for any ~~Prepayment Premium~~Make Whole (as defined in the Fee Letter)); (2) on the date of such assignment, Company shall pay any amounts payable to such Terminated Lender pursuant to Section 2.14 or 2.15 (except for any ~~Prepayment Premium~~Make Whole (as defined in the Fee Letter)); and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

Section 2.19 Making or Maintaining ~~LIBOR~~SOFR Rate Loans.

(a) Inability to Determine ~~Applicable Interest Rate~~. ~~In the event that~~ Administrative Agent shall have made good faith efforts to implement an Alternate Benchmark Rate and Administrative Agent shall have reasonably determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBOR Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBOR Rate Loans on the basis provided for in the definition of Adjusted LIBOR Rate, Administrative Agent shall on such date give notice (by facsimile or by telephone confirmed in writing) in accordance with Section 10.1 of this Agreement to Company and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Rate Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Company with respect to the Loans in respect of which such ~~determination was made shall be deemed to be rescinded by Company.~~Rates. Subject to Section 2.20, if, on or prior to the first day of any Interest Period for any SOFR Rate Loan:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof, or

(ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Rate Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Rate Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided written notice of such determination to the Administrative Agent, then the Administrative Agent will promptly so notify Company and each Lender.

Upon notice thereof by the Administrative Agent to Company, any obligation of the Lenders to make SOFR Rate Loans, and any right of Company to continue SOFR Rate Loans or to convert Base Rate Loans to SOFR Rate Loans, shall be suspended (to the extent of the affected SOFR Rate Loans or affected Interest Periods) until the Administrative Agent (with respect to clause (b), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) Company may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Rate Loans (to the extent of the affected SOFR Rate Loans or affected Interest Periods) or, failing that, Company will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Rate Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, Company shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.19(c). Subject to Section 2.20, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of "Base Rate" until the Administrative Agent revokes such determination.

(b) ~~Illegality or Impracticability of LIBOR Rate Loans. In the event that on any date any Lender shall have reasonably determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its LIBOR Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice (by facsimile or by telephone confirmed in writing) in accordance with Section 10.1 of this Agreement to Company and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (A) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (B) to the extent such determination by the Affected Lender relates to a LIBOR Rate Loan then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (C) the Affected Lender's obligation to maintain its outstanding LIBOR Rate Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (D) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Rate Loan then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, Company shall have the option, subject to the provisions of Section 2.19(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.19(b) shall affect the obligation of any Lender~~

~~other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Rate Loans in accordance with the terms hereof.~~Illegality. If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR (the "Affected Loans"), or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by such Lender (an "Affected Lender") to Company (through the Administrative Agent) (an "Illegality Notice"), (a) any obligation of the Lenders to make SOFR Rate Loans, and any right of Company to continue SOFR Rate Loans or to convert Base Rate Loans to SOFR Rate Loans, shall be suspended, and (b) the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Base Rate", in each case until each affected Lender notifies the Administrative Agent and Company that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, Company shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Rate Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Rate Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Rate Loans to such day, in each case until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. Upon any such prepayment or conversion, Company shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.19(c).

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its ~~LIBOR~~SOFR Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any ~~LIBOR~~SOFR Rate Loan does not occur on a date specified therefor in a Funding Notice, or a conversion to or continuation of any ~~LIBOR~~SOFR Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice; (ii) if any prepayment or other principal payment of, or any conversion of, any of its ~~LIBOR~~SOFR Rate Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (iii) if any prepayment of any of its ~~LIBOR~~SOFR Rate Loans is not made on any date specified in a notice of prepayment given by Company.

(d) Booking of ~~LIBOR~~SOFR Rate Loans. Any Lender may make, carry or transfer ~~LIBOR~~SOFR Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of ~~LIBOR~~SOFR Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.19 and under Section 2.14 shall be made as though such Lender had actually funded each of its relevant ~~LIBOR~~SOFR Rate Loans through the purchase of a ~~LIBOR~~SOFR deposit bearing interest at ~~the rate obtained pursuant to clause (a)(i) of the definition of~~ Adjusted ~~LIBOR Rate~~Term SOFR in an amount equal to the amount of such ~~LIBOR~~SOFR Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such ~~LIBOR~~SOFR deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its ~~LIBOR~~SOFR Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.19 and under Section ~~2.14~~2.14. Anything to the contrary contained herein notwithstanding, neither Administrative Agent, nor any Lender, nor any of their participants, is required actually to match fund any Obligation as to which interest accrues at Adjusted Term SOFR or the Term SOFR Reference Rate.

Section 2.20 Benchmark Replacement Setting.

~~(f) Provisions with Respect to LIBOR. If prior to the commencement of any Interest Period for any LIBOR Rate Loan,~~

~~(i) the Administrative Agent shall have reasonably determined that adequate and reasonable means do not exist for ascertaining LIBOR for such Interest Period, including, without limitation, because the Administrative Agent reasonably determines that either inadequate or insufficient quotations of the London interbank offered rate exist or the use of "LIBOR" has been discontinued (any determination of Administrative Agent to be conclusive and binding absent manifest error), or~~

~~(ii) the Administrative Agent shall have received notice from the Required Lenders that LIBOR does not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their LIBOR Rate Loans for such Interest Period,~~

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Administrative Agent and Company may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Administrative Agent has posted such proposed amendment to all affected Lenders and Company so long as Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.20(a) will occur prior to the applicable Benchmark Replacement Date.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. Administrative Agent will promptly notify Company and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will notify Company of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.20(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.20, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.20.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current Benchmark is a term rate (including the Term SOFR) and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Administrative Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (2) if a tenor that was removed pursuant to clause (1) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then

Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) ~~then the Administrative Agent shall give written notice to Borrower and to the Lenders as soon as practicable thereafter. Until the Administrative Agent shall notify Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) the obligations of the Lenders to make LIBOR Rate Loans, or to continue or convert outstanding Loans as or into LIBOR Rate Loans, shall be suspended and (B) all such affected Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto.~~Benchmark Unavailability Period. Upon Company's receipt of notice of the commencement of a Benchmark Unavailability Period, (1) Company may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Company will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (2) any outstanding affected SOFR Rate Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1 Closing Date. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Loan Documents. Administrative Agent shall have received copies of each Loan Document originally executed and delivered by each applicable Loan Party for each Lender party to this Agreement on the Closing Date.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received a Secretary's Certificate for each Loan Party attaching (i) copies of each Organizational Document of such Loan Party and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of such Loan Party approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary (or other duly authorized officer) as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority (A) of such Loan Party's jurisdiction of incorporation, organization or formation and (B) in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business (solely in the case of this subclause (B), except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect), each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Borrower and its Subsidiaries shall be as set forth on Schedule 4.2.

(d) Sources and Uses. On or prior to the Closing Date, Company shall have delivered to Administrative Agent Company's reasonable best estimate of all sources and uses of Cash and other proceeds of Term Loans on the Closing Date.

(e) Governmental Authorizations and Consents. Each Loan Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are

necessary in connection with the transactions contemplated by the Loan Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent.

(f) Personal Property Collateral. In order to create in favor of Administrative Agent, for the benefit of Secured Parties, a valid, perfected first priority security interest (subject to any exceptions permitted in the Collateral Documents) in the personal property Collateral, Administrative Agent shall have received:

(i) (A) evidence reasonably satisfactory to Administrative Agent of the compliance by each Loan Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including, without limitation, their obligations to authorize or execute, as the case may be as required under the applicable Collateral Documents, and deliver UCC financing statements, originals of securities (including stock certificates, if any, representing pledged Capital Stock along with appropriate endorsements), instruments and chattel paper, and any agreements governing deposit and/or securities accounts as provided therein and a duly executed authorization to pre-file UCC-1 financing statements which is effective as of the Closing Date), together with appropriate financing statements on Form UCC-1 in form for filing in such office or offices as may be necessary or, in the reasonable discretion of Administrative Agent, desirable to perfect the security interests purported to be created by each Pledge and Security Agreement and (B) evidence reasonably satisfactory to Administrative Agent of filing of such UCC-1 financing statements; provided, that such evidence of filing will not require the receipt on the Closing Date of certified copies of the filed UCC-1 financing statements;

(ii) a completed Perfection Certificate dated the Closing Date and executed by an Authorized Officer of each Loan Party, together with all attachments contemplated thereby, including the results of a recent search, by a Person satisfactory to Administrative Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any assets or property of any Loan Party in the jurisdictions specified in the Perfection Certificate, together with copies of all such filings disclosed by such search; and

(iii) evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including, without limitation, evidence that Bank of America, N.A. has agreed to the forms of, and is prepared to sign on or promptly after the Closing Date, one or more Control Agreements in respect of the Specified Deposit Accounts) and made or caused to be made any other filing and recording reasonably required by Administrative Agent, in each case, to the extent required by, and subject to the terms and conditions of, the Pledge and Security Agreement or any other Collateral Document in effect on the Closing Date.

(g) Financial Statements. Lenders shall have received from Borrower (i) the Historical Financial Statements (it being agreed that the financial statement for the month ended March 31, 2019 shall, if not available prior to the Closing Date, be delivered to Administrative Agent promptly upon it becoming available after the Closing Date) and (ii) pro forma consolidated balance sheets of Borrower and its Subsidiaries as at the Closing Date, and reflecting the transactions contemplated by the Loan Documents to occur on or prior to the Closing Date, which pro forma financial statements shall be in form and substance reasonably satisfactory to Administrative Agent.

(h) Evidence of Insurance. Administrative Agent shall have received a certificate from Company's insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect.

(i) Opinions of Counsel to Loan Parties. The Administrative Agent and its counsel shall have received copies of originally executed written opinions of DLA Piper LLP (US), counsel for Loan Parties, and such other applicable counsel for Loan Parties, dated as of the Closing Date and

otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Loan Party hereby instructs each such counsel to deliver such opinions to Administrative Agent and Lenders).

(j) Fees. Substantially contemporaneously with the initial funding of the Term Loan on the Closing Date, Company shall have paid to Administrative Agent, the fees and expenses then due and payable pursuant to Section 2.7 and Section 10.2.

(k) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate of the chief financial officer (or other substantially similar title) of Borrower substantially in the form of Exhibit F, dated as of the Closing Date and addressed to Administrative Agent and Lenders.

(l) Closing Date Certificate. Company shall have delivered to Administrative Agent an originally executed copy of the Closing Date Certificate, together with copies of all attachments thereto.

(m) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments (including any Regulatory Action), pending or threatened in any court or before any arbitrator or Governmental Authority that singly or in the aggregate, would have a Material Adverse Effect or would result in any Material Regulatory Liability.

(n) Minimum Qualified Cash. Administrative Agent shall have received evidence reasonably satisfactory to it that the Company shall have unrestricted Cash and Cash Equivalents (other than restrictions created by the Collateral Documents) of at least $50,000,000 immediately after giving effect to any Credit Extensions to be made on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash on the Closing Date.

(o) No Material Adverse Effect. Since December 31, 2018, no event, circumstance or change shall have occurred that has caused or has resulted in, either in any case or in the aggregate, a Material Adverse Effect.

(p) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found reasonably acceptable by Administrative Agent and its counsel and communicated in writing to the Loan Parties and their counsel as such shall be reasonably satisfactory in form and substance to Administrative Agent and such counsel.

(q) Bank Regulations. Administrative Agent shall have received all documentation and other information reasonably requested that is required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act, and all such documentation and other information shall be in form and substance reasonably satisfactory to the Administrative Agent.

(r) Funding Notice. Administrative Agent shall have received a fully executed and delivered Funding Notice.

(s) Representations and Warranties. The representations and warranties contained herein and in each other Loan Document or certificate delivered to Administrative Agent or any Lender pursuant hereto or thereto on or prior to the ~~date hereof~~Closing Date shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the ~~date hereof~~Closing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(t) No Default or Event of Default. No event shall have occurred and be continuing or would result from the consummation of the transactions contemplated herein that would constitute an Event of Default or a Default.

(u) No Contravention. The making of the Term Loan shall not contravene any law, rule or regulation of any Governmental Authority having appropriate jurisdiction over the Administrative Agent or any Lender that is applicable to Administrative Agent or any Lender.

(v) Existing Indebtedness. Substantially contemporaneously with the initial funding of the Term Loan on the Closing Date, Borrower and its Subsidiaries shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder, and (iii) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Borrower and its Subsidiaries thereunder being repaid on the Closing Date.

(w) Registrations. All Registrations from the FDA in respect of the Products shall be valid and subsisting and in full force and effect.

Each Lender, by delivering its signature page to this Agreement and funding the Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document, instrument or agreement required to be approved by Administrative Agent, Required Lenders and/or Lenders, as applicable, on the Closing Date.

Section 3.2 Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan on any date following the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice;

(ii) as of such Credit Date, the representations and warranties contained herein and in each other Loan Document or certificate delivered to any Agent or any Lender pursuant hereto or thereto on or prior to the Credit Date shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date;

(iii) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(iv) Administrative Agent shall have received evidence reasonably satisfactory to it that the Company shall have unrestricted Cash and Cash Equivalents (other than restrictions created by the Collateral Documents) of at least $60,000,000 immediately after giving effect to any Credit Extensions to be made on such Credit Date;

(v) solely in respect of any Delayed Draw A-1 Term Loan, (A) Company shall deliver a Funding Notice in respect of the Delayed Draw A-1 Term Loan either contemporaneously with the delivery of financial statements under Section 5.1(b) in respect of the fiscal quarter ending June 30, 2020 or at such earlier date as the Administrative Agent shall have consented to in its sole and absolute discretion (the "DD A-1 Request Date"), (B) the Administrative Agent shall have consented to make such Loan in its sole and absolute discretion on or before the date that is 10 Business Days after the DD A-1 Request Date, and (C) if the Administrative Agent consents to make such Loan in accordance with preceding clause (B), such Loan is made on or before the Delayed Draw Commitment Termination Date; and

(vi) solely in respect of any Delayed Draw A-2 Term Loan, the Chief Financial Officer of Company shall have delivered a certificate (together with such other evidence as is reasonably requested by Administrative Agent) representing and warranting, and otherwise demonstrating to the reasonable satisfaction of Administrative Agent, that the Product Revenue for the Fiscal Quarter ending December 31, 2019 is greater than $11,000,000.

(b) Notices. Any Notice shall be executed by an Authorized Officer of Company in a writing delivered to Administrative Agent.

## ARTICLE IV

## REPRESENTATIONS AND WARRANTIES

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Loan Party represents and warrants to each Agent and Lender, on the Closing Date and on each Credit Date, that the following statements are true and correct:

Section 4.1 Organization; Requisite Power and Authority; Qualification. Each of Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite corporate power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of Company, to make the borrowings hereunder, and (c) is qualified to do business and in good standing in every jurisdiction wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

Section 4.2 Capital Stock and Ownership. The Capital Stock of each of Borrower and its Subsidiaries has been duly authorized and validly issued and, if applicable, is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the ~~date hereof~~Amendment No. 11 Effective Date, there is no existing option, warrant, call, right, commitment or other agreement to which Borrower or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Borrower or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Borrower or any of its Subsidiaries of any additional membership interests or other Capital Stock of Borrower or any of its Subsidiaries or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Borrower or any of its Subsidiaries. As of the Amendment No, 11 Effective Date, Schedule 4.2 correctly sets forth the ownership interest of Borrower and each of its Subsidiaries in their respective Subsidiaries.

Section 4.3 Due Authorization. The execution, delivery and performance of the LoanDocuments have been duly authorized by all necessary corporate or limited liability, as applicable, action on the part of each Loan Party that is a party thereto.

Section 4.4 No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation of any Governmental Authority that is applicable to Borrower or any of its Subsidiaries, any of the Organizational Documents of Borrower or any of its Subsidiaries, or any order, judgment or decree of any court or other agency of government of any Governmental Authority that is binding on Borrower or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material Contractual Obligation of Borrower or any of its Subsidiaries; result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower or any of its Subsidiaries (other than any Liens created under any of the Loan Documents in favor of Administrative Agent, on behalf of Secured Parties); (d) result in any default, non-compliance, suspension revocation, impairment, forfeiture or non-renewal of any material permit, license, authorization or approval of any Governmental Authority having appropriate jurisdiction that is applicable to its operations or any of its properties; or (e) require any approval or consents of stockholders, members or partners of Borrower or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

Section 4.5 Governmental Consents.The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and/or recordation, as of the Closing Date.

Section 4.6 Binding Obligation. Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

Section 4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year end adjustments. As of the Closing Date, neither Borrower nor any of its Subsidiaries has any contingent liability or liability for taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower and any of its Subsidiaries taken as a whole.

Section 4.8 [Reserved].

Section 4.9 No Material Adverse Effect. Since December 31, 2018, no event, circumstance or change has occurred or has resulted in, either in any case or in the aggregate, a Material Adverse Effect.

Section 4.10 Adverse Proceedings, etc. As of the Closing Date, there are no Adverse Proceedings that (a) relate to any Loan Document or the transactions contemplated hereby or thereby or (b) individually or in the aggregate, could materially impair the Administrative Agent's security interest in the Collateral, the Borrower's and its Subsidiaries' respective rights, powers or remedies with respect to applicable Products or would otherwise reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries is in violation of or in default with respect to any final judgments, writs, injunctions, decrees, rules, laws or regulations of any Governmental Authority having appropriate jurisdiction except to the extent such violation or default could not reasonably be expected to result in a Material Adverse Effect.

Section 4.11 Payment of Taxes. Except as otherwise permitted under Section 5.3, all U.S. federal and material state and local income tax returns and other material reports of Borrower and its Subsidiaries required to be filed by any of them have been timely filed, all such tax returns are true, complete and correct in all material respects, and all U.S. federal and material state and local Taxes shown as due and payable on such tax returns and all assessments, fees and other governmental charges upon Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, except to the extent such violation or default could not reasonably be expected to result in a Material Adverse Effect. Borrower knows of no proposed Tax assessment against Borrower or any of its Subsidiaries which is not being actively contested by Borrower or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided ~~therefor~~therefore.

Section 4.12 Properties, Title. Each of Borrower and its Subsidiaries has (a) good, sufficient, marketable and legal title to (in the case of fee interests in real property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and valid title to (in the case of all other personal property), all of their respective tangible properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for (i) such assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9 or (ii) defects in title or interests which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All such properties and assets are in working order and condition, ordinary wear and tear excepted, and except as permitted by this Agreement or any of the Collateral Documents, all such non-leasehold properties and assets are free and clear of Liens. As of the Closing Date, Schedule 4.12 contains a true, accurate and complete list of all real property owned or leased by Borrower and its Subsidiaries or where Collateral or books and records are located.

Section 4.13 Environmental Matters. In each case of the following sub-clauses (a)-(d), except as any such failure or exception to the applicable representation and warranty would not reasonably be expected to result in a Material Adverse Effect:

(a) No Environmental Claim has been asserted against any Loan Party or any predecessor in interest nor has any Loan Party received notice of any threatened or pending Environmental Claim against Loan Party or any predecessor in interest.

(b) There has been no Release of Hazardous Materials and there are no Hazardous Materials present in violation of Environmental Law at any of the properties currently owned or operated by any Loan Party.

(c) The operation of the business of, and each of the properties owned or operated by, each Loan Party are in compliance with all Environmental Laws.

(d) Each Loan Party holds and is in compliance Governmental Authorizations required under any Environmental Laws in connection with the operations carried on by it and the properties owned or operated by it.

Section 4.14 No Defaults. Neither Borrower nor any of its Subsidiaries (a) is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and (b) no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except , in each case of the foregoing subclauses (a)-(b), where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

Section 4.15 Material ~~Contracts~~Contract.

(a) ~~Schedule 4.15 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, which Material Contracts, together with any updates provided pursuant to Section 5.1(l), are~~The Material Contract is in full force and effect and no defaults giving any party thereto the right to terminate such Material Contract currently exist thereunder ~~(other than as described in Schedule 4.15 or in such updates)~~.

(b) ~~Except as described in Schedule 4.15, each~~As of the Amendment No. 11 Effective Date, the Material Contract is a legal, valid and binding obligation of Borrower, its Subsidiaries and, to the knowledge of Borrower, each other party thereto, is enforceable in accordance with its terms and is in full force and effect, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. Neither the Borrower nor its Subsidiaries, nor to the knowledge of the Authorized Officers of Borrower or its Subsidiaries, any other party to ~~any~~the Material Contract, is or was in material breach or default, under the terms of ~~any~~the Material Contract, and no condition existed or exists which, with the giving of notice or the lapse of time or both, could constitute a material breach or default by Borrower or any of its Subsidiaries thereunder.

Section 4.16 Governmental Regulation. Neither Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Borrower nor any of its Subsidiaries is required to register as a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

Section 4.17 Margin Stock. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Term Loans made to such Loan Party will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 4.18 Employee Benefit Plans. No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect.

Section 4.19 Certain Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

Section 4.20 Solvency. The Loan Parties, on a consolidated basis, are and, upon the incurrence of the Credit Extension by the applicable Loan Party on the Closing Date and on each date on which this representation and warranty is made, will be, Solvent.

Section 4.21 [Reserved].

Section 4.22 Compliance with Statutes, etc. Each of Borrower and its Subsidiaries is in compliance with (i) its Organizational Documents and (ii) all ~~applicable laws, statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities having appropriate jurisdiction,~~Requirements of Law in respect of the conduct of its business and the ownership of its property, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 4.23 Intellectual Property.

(a) Each of Borrower and its Subsidiaries own, or hold licenses or rights in, all trademarks, trade secrets, trade names, copyrights, and patents~~, and licenses~~ that are necessary to the conduct of its business as currently conducted.

(b) Schedule 4.23(b) sets forth a true, correct and complete listing in all material respects of all U.S. and foreign Product Patents as of the Closing Date, and identifies the owner of each such Product Patent and the Product to which such Product Patent relates. As of the Closing Date and except as identified in Schedule 4.23(b), to the best of Borrower's and its Subsidiaries' knowledge and except as would not reasonably be material to the Company, taken as a whole, (i) the owner listed on Schedule 4.23(b) for each Product Patent is the exclusive owner of such patent/application and no Third Party has any right, title, interest or ownership claim in such Product Patent, (ii) ~~to the best of Borrower's and its Subsidiaries' knowledge,~~ the Product Patents are valid, subsisting, and enforceable; (iii) except for those patent applications that that are abandoned or ~~lapse~~lapsed, in the case of provisional patent applications, in the due course of patent prosecution and in accordance with the reasonable business judgment of the Company and its subsidiaries in executing a comprehensive patent strategy designed to maximize and maintain exclusivity of the Products, none of the Product Patents have lapsed or been abandoned, cancelled or expired; (iv) Company has taken commercially reasonable steps to maintain such Product Patents, including by timely filing fees and responses; (v) each individual associated with the filing and prosecution of the Product Patents, including the named inventors, has complied in all material respects with all applicable duties of candor and good faith in dealing with any patent office, including the USPTO, in those jurisdictions where such duties exist.

(c) As of the Closing Date, Schedule 4.23(c) sets forth a true, correct and complete listing, under separate headings, of all material written Contractual Obligations (i) under which Company or its Subsidiaries uses or licenses any Product Patents that any other Person owns, or owes any royalties or other payments to any Person for the use of any Product Patents, (ii) under which Company or its Subsidiaries have granted any Person any right or interest in any Product Patents, and (iii) that otherwise materially limit the Company or its Subsidiaries' use of or rights in the Product Patents (including co-existence agreements and covenants not to sue). Company may update this list to add additional licenses, so long as such amendment occurs by written notice to Administrative Agent, and subject to Company's obligations and restrictions under this Agreement.

(d) ~~There~~To the best of Borrower's knowledge and except as would not reasonably be material to the Company, taken as a whole, there is no opposition, interference, reexamination, derivation or other post-grant proceeding, injunction, claim, suit, action, subpoena, hearing, inquiry, investigation (by the International Trade Commission or otherwise), complaint, arbitration, mediation, demand, decree or other dispute, disagreement, proceeding or claim (collectively, "Disputes") that is pending or currently threatened in writing, that challenges the scope, validity, enforceability, ownership, or inventorship of the Product Patents. Company and its Subsidiaries have not received any written notice that there is any, and to the knowledge of the Authorized Officers of the Borrower and its Subsidiaries there is no, Person who is or claims to be an inventor under any of the Product Patents who is not a named inventor thereof.

(e) To the best of Borrower's knowledge and except as would not reasonably be material to the Company, taken as a whole, there is no past, pending or threatened, and no event has occurred or circumstance exists that (with or without notice or lapse of time, or both) could reasonably be expected to give rise to or serve as a basis for any, action, suit, or proceeding, or any investigation or written claim by any Person that claims or alleges that the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product, once marketed, does or could infringe on any patent or other intellectual property rights of any other Person or constitute misappropriation of any other Person's trade secrets or other intellectual property rights anywhere in the world.

Section 4.24 Insurance. Each of Borrower and its Subsidiaries (a) maintains insurance to such extent and against such risks, as is customary with companies in the same or similar businesses, (b) is covered by workmen's compensation insurance in the amount required by applicable law, (c) maintains

commercial general liability insurance, which shall include product liability insurance, in the amount customary with companies in the same or similar business against claims for personal injury or death on properties owned, occupied or controlled by it, and (d) maintains such other insurance as may be required by any Governmental Authority. Schedule 4.24 sets forth a list of all insurance maintained by each Loan Party on the Closing Date.

Section 4.25 Common Enterprise. Each Loan Party expects to derive benefit (and its Board of Directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of a group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

Section 4.26 Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required by any Governmental Authority having appropriate jurisdiction for such Person to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except for any such permits, licenses, authorizations, approvals, entitlements and accreditations which, if not obtained, could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect, except, in each case, to the extent any such condition, event or claim could not be reasonably be expected to have a Material Adverse Effect.

Section 4.27 Bank Accounts and Securities Accounts. Schedule 4.27 sets forth a complete and accurate list in all material aspects as of the Closing Date of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Loan Party, together with a description thereof in reasonable detail (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

Section 4.28 Security Interests. The Collateral Documents create in favor of Administrative Agent, for the benefit of Secured Parties, a legal, valid and enforceable security interest in the Collateral secured thereby. Upon the filing of the UCC-1 financing statements described in Section 3.1(f), the possession by the Administrative Agent of any certificated Capital Stock or instrument owned by such Loan Party, the recording of the Collateral Assignments for Security referred to in each Pledge and Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office and the taking of all other actions required by the Pledge and Security Agreement, as applicable, such security interests in and Liens on the Collateral granted thereby shall be perfected, first priority (subject to any Permitted Liens) security interests, and no further recordings or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Liens, other than (a) the filing of continuation statements in accordance with applicable law, (b) the recording of the Collateral Assignments for Security pursuant to each Pledge and Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, with respect to after-acquired U.S. patent and trademark applications and registrations and U.S. copyrights, and (c) subject to Section 5.11, the recordation of appropriate evidence of the security interest in the appropriate foreign registry with respect to all foreign intellectual property and all other recordings and filings required in any jurisdiction other than the U.S. in order to create, register or perfect any such security interests, in each case, so long as Administrative Agent has not required any Loan Party to create, register or perfect such security interests in accordance with Section 5.11.

Section 4.29 PATRIOT ACT and FCPA. To the extent applicable, each Loan Party is in compliance with (a) the laws, regulations and Executive Orders administered by OFAC, and (b) the Bank Secrecy Act, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act ) of 2001 (the "PATRIOT

Act"). Neither the Loan Parties nor any of their officers, directors, employees, agents or shareholders acting on the Loan Parties' behalf shall use the proceeds of the Loans to make any payments, directly or indirectly (including through any third party intermediary), to any Foreign Official in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). None of the Loan Parties nor any Affiliates of any Loan Parties that are controlled by the Loan Parties, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws. None of the Loan Parties, nor any Affiliates of any Loan Parties that are controlled by the Loan Parties, or their respective agents acting or benefiting in any capacity in connection with the Loans or other transactions hereunder, is a Blocked Person. None of the Loan Parties, nor any of their agents acting in any capacity in connection with the Loans or other transactions hereunder (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any OFAC Sanctions Programs.

Section 4.30 ~~Managerial Assistance and Related Persons~~[Reserved].

Section 4.31 Use of Proceeds. ~~Each Loan Party represents and warrants that (a) Sixth Street has offered to make available to each of them "significant managerial assistance" (as defined in Section 2(a)(47) of the Investment Company Act of 1940) and, to the extent any Loan Party accepts such offer from Sixth Street, the scope, terms and conditions of such significant managerial assistance are set forth in a separate agreement between such Loan Party and Sixth Street and (b) it is not a "person" related to Sixth Street as described in Section 57(b) or 57(e) of the Investment Company Act of 1940.~~The proceeds of the Term Loan shall be applied by Company for working capital, capital expenditures, and general corporate purposes of Borrower and its Subsidiaries. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

Section 4.32 ~~Section 4.31~~ Disclosure. No representation or warranty of any Loan Party contained in any Loan Document or in any other documents, certificates or written statements made or furnished to Lenders by or on behalf of Borrower or any of its Subsidiaries for use in connection with the transactions contemplated hereby when taken as a whole contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Notwithstanding anything to the contrary in the foregoing, it is hereby understood and agreed by each party to this Agreement that any projections, budgets, estimates, pro forma financial information, any other forward-looking statements or information of a general economic or industry nature contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Lenders that such projections, budgets, estimates, pro forma financial information and forward looking statements are not to be viewed as facts and that actual results during the period or periods covered by any such projections, budgets, estimates, pro forma financial information and forward looking statements may differ from the projected results and such differences may be material. There are no facts known (or which should upon the reasonable exercise of diligence be known) to any Authorized Officer of the Company (other than matters of a general economic nature) that, individually or in the aggregate, are material and pertinent in the transactions contemplated hereby or the Products that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

~~Section 4.32 Use of Proceeds. The proceeds of the Term Loan shall be applied by Company~~ for ~~working capital, capital expenditures, and general corporate purposes of Borrower and its Subsidiaries. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.~~

Section 4.33 Regulatory Compliance.

(a) Each of Borrower and its Subsidiaries have all necessary Registrations from the FDA~~, comparable foreign counterparts~~ or any other Governmental Authority required to conduct their respective businesses as currently conducted, except where the failure to have all such Registrations would not reasonably be expected to, individually or in the aggregate, result in Material Regulatory Liabilities. Each of such Registrations is valid and subsisting in full force and effect, except such Registrations that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability. To the knowledge of Borrower and its Subsidiaries, neither the FDA nor any comparable Governmental Authority is considering limiting, suspending, or revoking such Registrations or changing the marketing classification or labeling of any Products under such Registrations. To the knowledge of the Borrower and its Subsidiaries, there is no known false or materially misleading information or significant omission in any Product application or other written notification, submission or report to the FDA or any comparable Governmental Authority that was not corrected by subsequent submission, and all such applications, notifications, submissions and reports provided by Borrower and its Subsidiaries were true, complete, and correct in all material respects as of the date of submission or subsequent submission to FDA or any comparable Governmental Authority. Borrower and its Subsidiaries have not failed to fulfill and perform their material obligations which are due under each such Registration, and, no event has occurred or condition or state of facts exists which would constitute a breach or default under any such Registration, in each case that would reasonably be expected to cause the revocation, termination or suspension or material limitation of any such Registration, except where the failure to have all such Registrations could not reasonably be expected to, individually or in the aggregate, result in any Material Regulatory Liability. To the knowledge of the Borrower and its Subsidiaries, any third party that develops, researches, manufactures, commercializes, distributes, sells or markets Products pursuant to an agreement with Borrower or its Subsidiaries (a "Loan Party Partner") is in compliance with all Registrations from the FDA and any comparable Governmental Authority insofar as they pertain to Products, and each such Loan Party Partner is in compliance with applicable Public Health Laws, except where the failure to so be in compliance would not reasonably be expected to, individually or in the aggregate, result in Material Regulatory Liabilities.

(b) Each of Borrower and its Subsidiaries is in compliance, and has been in compliance, with all Public Health Laws, except to the extent that any such non-compliance, individually or in the aggregate, could not reasonably be expected to result in Material Regulatory Liabilities.

(c) To the extent applicable, all ~~products~~Products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold, marketed or delivered by or on behalf of Borrower or any of its Subsidiaries, that are subject to the jurisdiction of the FDA have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold, marketed or delivered in compliance in all material respects with the Public Health Laws, except where such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability. To the knowledge of Borrower and its Subsidiaries, there are no defects in the design or technology embodied in any Products that are reasonably expected to prevent the safe and effective performance of any such Product for its intended use (other than such limitations specified in the applicable package insert), except for such defects that would not reasonably be expected to, individually or in the aggregate, result in Material Regulatory Liabilities or other Liabilities. None of the Products has been the subject of any products liability or warranty action against Borrower or its Subsidiaries, except such action that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability.

(d) Neither Borrower nor any of its Subsidiaries is currently subject to any ~~material obligation arising pursuant to a~~ Regulatory Action, except such Regulatory Actions that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability, and, to the knowledge of Borrower and its Subsidiaries, no such ~~material obligation or~~ Regulatory Action has been threatened by a Governmental Authority in writing. In addition, and without limitation on the foregoing, except as set forth on Schedule 4.33(d) neither Borrower nor any of its Subsidiaries has received any written notice ~~or communication~~ from the FDA~~, comparable foreign counterparts or any other Governmental Authority~~ alleging material non-compliance with any Public Health Law ~~or comparable foreign laws~~, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability.

(e) Except as set forth on Schedule 4.33(e), (i) neither Borrower nor any of its Subsidiaries has received any written notice ~~or communication~~ from the FDA ~~or any other Governmental Authority~~ alleging material noncompliance with any Public Health Law, including without limitation any Form FDA 483, notice of inspectional observation, notice of adverse finding, notice of violation, warning letters, untitled letters or other notices from the FDA, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability, and (ii) to the knowledge of Borrower and its Subsidiaries, no Loan Party Partner has received any written notice ~~or communication~~ from the FDA ~~or any other Governmental Authority~~ alleging material noncompliance with any Public Health Law, including without limitation any Form FDA 483, notice of inspectional observation, notice of adverse finding, notice of violation, warning letters, untitled letters or other notices from the FDA relating to such Loan Party Partner's work for Borrower or such Subsidiary, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability. No Product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution or commercialization activity~~.~~ ~~Neither Borrower nor any of its Subsidiaries is aware of any facts or circumstances that are reasonably likely~~, except such action that, individually or in the aggregate, could not reasonably be expected to result in ~~any recall of any Product.~~a Material Regulatory Liability.

Section 4.34 Government Contracts. Except as set forth on Schedule 4.34 as of the Closing Date ~~hereof~~, neither Borrower nor any of its Subsidiaries is a party to any contract or agreement with any Governmental Authority and none of Borrower's or such Subsidiary's accounts receivables or other rights to receive payment are subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state, county or municipal law.

Section 4.35 Health Care Regulatory Laws.

(a) None of Borrower and its Subsidiaries, nor, to their knowledge, any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, is a party to, or bound by, any written order, individual integrity agreement, corporate integrity agreement or other formal written agreement with any Governmental Authority concerning their compliance with Federal Health Care Program Laws, except such agreements that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability.

(b) None of Borrower and its Subsidiaries, nor, to their knowledge, any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, ~~nor to the knowledge of Borrower and its Subsidiaries, any Loan Party Partner~~except for the following that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability: (i) has been ~~charged with or~~ convicted of any criminal offense relating to the delivery of an item or service under any Federal Health Care Program; (ii) has had a civil monetary penalty assessed against it, him or her under Section 1128A of the SSA; (iii) has been listed on the U.S. General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs; or (iv) to the knowledge of Borrower and its Subsidiaries, is the target or subject of any current or potential investigation relating to any of the foregoing or any Federal Health Care Program-related offense. None of Borrower and its Subsidiaries, nor, to their knowledge, any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof~~, nor any Loan Party Partner,~~ has been debarred, excluded, disqualified or suspended from participation in any Federal Health Care Program or under any FDA Laws (including 21 U.S.C. § 335a).

(c) ~~None of Borrower and its Subsidiaries, nor any officer, director, managing~~ employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, nor to the knowledge of Borrower and its Subsidiaries, any Loan Party Partner, has engaged in any activity that is in material ~~violation of any Federal Health Care Program Laws, including the following:~~[Reserved].

(i) knowingly and willfully making or causing to be made a false statement ~~or representation of a material fact in any application for any benefit or payment;~~

(ii) knowingly and willfully making or causing to be made a false statement ~~or representation of a material fact for use in determining rights to any benefit or payment;~~

(iii) ~~knowingly and willfully soliciting or receiving any remuneration~~ (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or kind (1) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under any Federal Health Care Program;

or (2) in return for purchasing, leasing, or ordering, or arranging, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any Federal Health Care Program in violation of 42 U.S.C. Section 1320a-7b(b); ~~or~~

(iv) knowingly and willfully offering or paying any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce such person (1) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal Health Care Program; or (2) to purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a Federal Health Care Program in violation of 42 U.S.C. Section 1320a-7b(b).

(d) To the knowledge of Borrower and its Subsidiaries, no person has filed or has threatened to file against Borrower or any of its Subsidiaries, an action relating to any FDA Law, Public Health Law or Federal Health Care Program Law under any whistleblower statute, including without limitation, under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.), except where such filing or action that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability.

(e) Each of Borrower and its Subsidiaries is in compliance in all material respects with HIPAA, and the provisions of all business associate agreements (as such term is defined by HIPAA) to which it is a party, and has implemented reasonably adequate policies, procedures and training designed to assure continued compliance and to detect non-compliance, except where the failure to implement such policies, procedures, and training would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

## ARTICLE V

## AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than any such contingent obligations or liabilities hereunder that by the express terms thereof survive such payment in full of all Obligations), each Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article V.

Section 5.1 Financial Statements and Other Reports. Unless otherwise provided below, Borrower will deliver to Administrative Agent (for delivery to the Lenders):

(a) Cash Reports. ~~The~~Commencing with the fiscal month following the first full fiscal month after the Amendment No. 11 Effective Date, the Company shall provide to the Administrative Agent ~~one of the following: (i) on each~~as soon as available, and in any event by the 2nd Business Day, of each fiscal month of the Company a report of at least 95% of the current Cash and Cash Equivalent balances of the Company and its Subsidiaries (the "Specified Cash"), which report shall identify

unrestricted (other than restrictions created by the Collateral Documents) and restricted Cash and Cash Equivalents (or, if greater, all Cash and Cash Equivalent balances required to satisfy the covenant set forth in Section 6.8) ~~or (ii) electronic, read only access to such Deposit Accounts of the Company and its Subsidiaries which contain~~; provided, that (i) if at any time the Qualified Cash of the Company is less than $7,500,000 (the "Cash Report Threshold"), the Company shall notify the Administrative Agent within 1 Business Day of the failure to equal or exceed the Cash Report Threshold and (ii) at any time during which the Company fails to equal or exceed the Cash Report Threshold, upon the request of the Administrative Agent (which may be more frequently than monthly but in no event shall be more frequently than weekly), the Company shall provide the Administrative Agent promptly upon such request, a report of the Specified Cash.

(b) Quarterly Financial Statements. As soon as available, and in any event (i) within 45 days after the end of the first three Fiscal Quarters of each Fiscal Year (other than the first Fiscal Quarter ending after the Amendment No. 11 Effective Date) and (ii) within 60 days after the end of (x) the first Fiscal Quarter ending after the Amendment No. 11 Effective Date and (y) the fourth Fiscal Quarter of each Fiscal Year, the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, statements of income and cash flows of Borrower and its Subsidiaries for such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each Fiscal Year, (i) the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Grant Thornton LLP or other independent certified public accountants of recognized national standing selected by Borrower~~, and reasonably satisfactory to Administrative Agent~~ (which report shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP);

(d) Compliance Certificate. Together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to Section 5.1(b) or Section 5.1(c), a duly executed and completed Compliance Certificate; ~~Notwithstanding the foregoing, the obligations in paragraphs (b), (c) and (d) of this Section 5.1 may be satisfied with respect to financial information of Borrower and its Subsidiaries by furnishing Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, to the extent such information is in lieu of information required to be provided under Section 5.1(c), such materials are accompanied by an opinion of Grant Thornton LLP or other independent certified public accountants of recognized national standing selected by Borrower, and reasonably satisfactory to Administrative Agent, which opinion shall meet the standards set forth in Section 5.1(c).~~

(e) Product Information. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter of any Fiscal Year), a description of ~~(i)~~ the aggregate number of Product units sold by the Loan Parties and the gross and net revenues with respect thereto presented on a monthly basis ~~and (ii) the number of Product units~~ sold by VitaCare Prescription Services, Inc. and the gross and net revenues with respect thereto presented ~~on a monthly basis.~~ .

(f) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the information contained in the consolidated financial statements of

Borrower and its Subsidiaries delivered pursuant to Section 5.1(b) or Section 5.1(c) (to the extent such information is applicable to the calculation of Product Revenue for purposes of determining the Borrower's compliance with Section 6.8(b)) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(g) Notice of Default. Promptly (but in any event within five (5) Business Days) upon any Authorized Officer of Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that written notice has been given to Borrower with respect thereto; (ii) that any Person has given any written notice to Borrower or any of its Subsidiaries or taken any other action which is reasonably likely to cause an Event of Default to occur pursuant to Section 8.1(b) of this Agreement; or (iii) of the occurrence of any event or change that has caused or resulted in any case or in the aggregate, a Material Adverse Effect or Material Regulatory Liabilities, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(h) Notice of Litigation. Promptly (but in any event within five (5) Business Days) upon any Authorized Officer of Company obtaining knowledge of (i) the institution of, or non-frivolous written threat of, any material Adverse Proceeding or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii) which relates to the Products, the Collateral or the Material ~~Contracts~~Contract or which could reasonably be expected to result in Material Regulatory Liabilities, or which seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters;

(i) ERISA. Promptly (but in any event within five (5) Business Days) upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to result in a ~~material Liability to a Loan Party~~Material Adverse Effect, a written notice specifying the nature thereof, what action a Loan Party or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(j) Insurance Report. As soon as practicable and in any event within 30 days after the end of each Fiscal Year, a report in form and substance reasonably satisfactory to Administrative Agent outlining all material changes in insurance coverage maintained as of the date of such report by Borrower and its Subsidiaries compared to the last day of the prior Fiscal Year, and any material changes to the insurance coverage planned to be maintained by Borrower and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) Regulatory and Product Notices. Each Loan Party shall promptly (but in any event within five (5) Business Days) after the receipt or occurrence thereof notify Administrative Agent of:

(i) any written notice received by Borrower or its Subsidiaries alleging potential or actual material violations of any Public Health Law by Borrower or its Subsidiaries by any Governmental Authority,

(ii) any written notice that the FDA ~~(or international equivalent)~~ is limiting, suspending or revoking any Registration,

(iii) any written notice that Borrower or its Subsidiaries has become subject to any Regulatory Action (other than any inspection or investigation in the ordinary course of business),

(iv) the exclusion or debarment from any governmental health care program or debarment or disqualification by FDA of Borrower or its Subsidiaries or its or their Authorized Officers,

(v) any written notice addressed to Borrower or any Subsidiary that a Borrower or any Subsidiary, or any of their licensees or sublicensees (including licensees or sublicensees under the Product Agreements), is being investigated or is the subject of any allegation of potential or actual violations of any Federal Health Care Program Laws, in each case, which could reasonably be expected to result in a Material Adverse Effect,

(vi) any written notice that any Product of Borrower or its Subsidiaries has been seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States by a Governmental Authority having appropriate jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product or Products are pending or threatened in writing against Borrower or its Subsidiaries, or

(vii) ~~changing the market classification or labeling of the Products of Borrower and its Subsidiaries under any such Registration in a manner materially adverse to Borrower and its Subsidiaries,~~ [reserved], except, in each case of (i) through (vii) above, where such action would not reasonably be expected to have, either individually or in the aggregate, Material Regulatory Liabilities;.

(l) Notice Regarding Material ~~Contracts~~Contract. Promptly (but in any event within five (5) Business Days) (i) after a Loan Party or a Subsidiary of a Loan Party receives a written notice of default or event of default under ~~any~~the Material Contract giving any party thereto the right to terminate ~~such~~the Material Contract, and (ii) after Loan Party or a Subsidiary of a Loan Party receives or otherwise becomes aware of any (A) any dispute, purchase price adjustment, indemnity claim, exercise of rights of set-off or deduction (in each case, not in the ordinary course of business) or (B) litigation (including litigation threatened in writing), in each case for clauses (A) and (B) under or with respect ~~any~~the Material Contract~~, and (iii) after a new Material Contract is entered into~~, in each case of clauses (i) ~~through~~and (~~iii~~ii), furnish a written statement describing such event, with copies of such notices or new contracts together with all reasonably pertinent detail and information relating thereto, delivered to Administrative Agent, and an explanation of any actions being taken with respect thereto;

(m) Information Regarding Collateral. Company will furnish to Administrative Agent prior written notice of any change (a) in any Loan Party's legal name or (b) in any Loan Party's corporate identity or corporate structure. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC that are required in order for Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral in which a security interest may be perfected by the filing of a UCC-1 in the state of organization or formation of the Company or such applicable Guarantor and for such Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Company also agrees promptly to notify Administrative Agent if any material portion of the Collateral is damaged or destroyed;

(n) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(c), Company shall deliver to Administrative Agent an Officer's Certificate either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.1(n) and/or identifying such changes;

(o) Products.

(i) Promptly, but in any event within five (5) Business Days after ~~the receipt by~~ the Company or any of its Subsidiaries or any Authorized Officer thereof obtaining knowledge of the occurrence thereof, notice of:

(A) granting any exclusive sublicenses under any Product Agreement;

(B) entering into any new Product Agreement (to the extent permitted under this Agreement); and

(C) any material communications with the FDA that ~~could~~would reasonably be expected to result in a Material Adverse Effect; and

(ii) Quarterly, in connection with the delivery of the Compliance Certificate required by Section 5.1(d), copies of royalty reports received for such quarter pursuant to any Product Agreement;

(p) Regulatory Documentation. Company shall be responsible for, and shall maintain, with respect to each Product, all submissions to Governmental Authorities relating to the Products, including clinical studies, tests and biostudies, including all Product non-disclosure agreements, and the drug master files, as well as all correspondence with Governmental Authorities with respect thereto (including Registrations and licenses and regulatory drug lists, and any amendments or supplements thereto), except such submissions that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability. Concurrent with the delivery of a Compliance Certificate following the end of each Fiscal Quarter in accordance with Section 5.1(d) and promptly following Administrative Agent's reasonable request from time to time, Company shall promptly provide to Administrative Agent copies of any and all regulatory filings submitted to any such Governmental Authorities and material written correspondence sent to or received from Governmental Authorities, in each case, with respect to the Products;, except such filings that, individually or in the aggregate, could not reasonably be expected to result in a Material Regulatory Liability;

(q) Maintenance of Product Patents. Company shall take all commercially reasonable steps to maintain the Product Patents, including by timely filing fees and responses with the United States Patent and Trademark Office or any applicable foreign counterpart. Company shall provide prompt written notice to Administrative Agent of any material adverse occurrences with respect to any Product Patents, and, upon Administrative Agent's request from time to time, shall promptly provide Administrative Agent with complete and correct copies of any material correspondence sent by Company to or received from the United States Patent and Trademark Office or any applicable foreign counterpart with respect to any Product Patent; and

(r) Other Information. (A) Promptly upon their becoming available and in any event within five (5) Business Days of Borrower's receipt thereof, copies of ~~(i) all reports and all registration statements and prospectuses, if any, filed by Borrower or any of its Subsidiaries with the Securities and Exchange Commission or any similar governmental or private regulatory authority and which is not otherwise publicly available, and (ii)~~ all amendments, waivers, consents, notices of default and reservations of rights with respect to and received by Borrower or its Subsidiaries from any holder of its Indebtedness having a principal amount greater than $5,000,000, (B) subject to any applicable confidentiality restrictions or restrictions under applicable law, promptly after submission to any Governmental Authority, all material documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party (other than a routine inquiry), and (C) such other information and data with respect to Borrower or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent in good faith in writing in accordance with Section

10.1 of this Agreement.

(s) Accounts Payable. Promptly, but in any event within 10 days after the end of each fiscal month of the Company and its Subsidiaries commencing for the month of February 2022, a report in ~~form and detail reasonably satisfactory to the Administrative Agent and certified by an Authorized Officer of the Borrower as being accurate and complete in all material respects listing all accounts~~ payable of the Loan Parties as of the end of such fiscal month, which report shall include the amount and ~~age of each such account payable.~~

(s) ~~(t) Weekly Cash Flow Report.~~ [Reserved].

(i) As soon as available, and in any event by no later than Friday of each week beginning on March 11, 2022, the Loan Parties shall deliver a weekly cash flow forecast of the Borrower and its Subsidiaries for the following week in form and substance satisfactory to the Administrative Agent (the "Cash Flow Forecast") and on each Friday thereafter, an updated Cash Flow Forecast, and (ii) by no later than Friday of each week commencing March 18, 2022, a variance report, reconciling the prior week's Cash Flow Forecast to the actual sources and uses of cash for the prior week, ~~along with a reconciliation and explanation of material variances.~~

Section 5.2 Existence. Except as otherwise permitted under Section 6.9, each Loan Party will, and will cause each of Borrower's Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and Governmental Authorizations, qualifications, franchises, licenses and permits material to its business and to conduct its business in each jurisdiction in which its business is conducted, except, in each case, which such failure to do so would not, either individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect; provided, no Loan Party or any of Borrower's Subsidiaries shall be required to preserve any such existence, right or Governmental Authorizations, qualifications, franchise, licenses and permits if such Person's Board of Directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

Section 5.3 Payment of Taxes and Claims. Each Loan Party will, and will cause each of Borrower's Subsidiaries to, (a) file all Tax returns required to be filed by Borrower or any of its Subsidiaries and (b) pay (i) all Taxes exceeding $500,000 imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon and (ii) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay imposition of any penalty, fine or Lien resulting from the non-payment thereof. No Loan Party will, nor will it permit any of Borrower's Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Borrower or its Subsidiaries).

Section 5.4 Maintenance of Properties. Each Loan Party will, and will cause each of Borrower's Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all tangible properties used or useful in the business of Borrower and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except, in each case, to the extent any such failure to maintain would not reasonably be expected to have a Material Adverse Effect, and (b) comply at all times with the provisions of all material leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except, in each case, to the extent any such failure to comply could not reasonably be expected to have a Material Adverse Effect.

Section 5.5 Insurance.

(a) The Loan Parties will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Administrative Agent, and (ii) casualty insurance, such commercial general liability insurance, third party property damage insurance or such other insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Loan Parties as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each such commercial general policy of insurance shall (1) name Administrative Agent, on behalf of Lenders as an additional insured thereunder as its interests may appear, and (2) in the case of each property insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Administrative Agent, that names Administrative Agent, on behalf of Secured Parties as the loss payee thereunder. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, Administrative Agent may, upon prior written notice to Company, arrange for such insurance, but at Company's expense and without any responsibility on Administrative Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(b) Each of the insurance policies required to be maintained under this Section 5.5 shall provide for at least thirty (30) days' prior written notice to Administrative Agent of the cancellation or substantial modification thereof. Receipt of such notice shall entitle Administrative Agent (but Administrative Agent shall not be obligated), upon prior written notice to the Loan Parties, to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to this Section 5.5 or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Loan Parties and to the extent the Loan Parties have not so renewed such policies or obtained similar insurance in place therefor.

Section 5.6 Books and Records; Inspections. Each Loan Party will, and will cause each of Borrower's Subsidiaries to, (a) maintain at all times at the chief executive office of Borrower copies of all material books and records of Borrower and its Subsidiaries, (b) keep adequate books of record and account in which full, true and correct entries in all material respects are made of all dealings and transactions in relation to its business and activities and (c) permit any representatives designated by Administrative Agent or any Lender (including employees of Administrative Agent, any Lender or any consultants, auditors, accountants, lawyers and appraisers retained by Administrative Agent) to visit any of the properties of any Loan Party and any of Borrower's Subsidiaries to inspect, copy and take extracts from its and their financial and accounting records, all upon reasonable notice and at such reasonable times during normal business hours (so long as no Default or Event of Default has occurred and is continuing) and as often as may reasonably be requested; provided that, excluding any such visits and inspections during the occurrence and continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 5.6 and the Administrative Agent shall not, absent the occurrence and continuance of an Event of Default, exercise such rights more often than one time during any calendar year. The Loan Parties agree to pay the reasonable and documented out-of-pocket costs and expenses incurred by the examiner in connection therewith. Notwithstanding anything to the contrary in this Section 5.6, none of the Loan Parties or any of their Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to the Agents or any Lender (or their respective representatives) is prohibited by applicable law or Contractual Obligations that (A) are owed to any Person that is not an Affiliate of Borrower or its Subsidiaries that is controlled by

Borrower or its Subsidiaries pursuant to a binding agreement to which Borrower or its Subsidiaries are a party and (B) that have not been waived by such Person following the use by Borrower or its Subsidiaries of commercially reasonable efforts to obtain such waiver or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 5.7 Lenders Meetings and Conference Calls.

(a) Borrower will, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

(b) Within 10 Business Days after delivery of financial statements and other information required to be delivered pursuant to Section 5.1(b), Borrower shall, upon request by the Administrative Agent, cause its chief financial officer or other Authorized Officers to participate in a conference call with Administrative Agent and all Lenders who choose to participate in such conference call, during which conference call the chief financial officer or such Authorized Officer shall review the financial condition of Borrower and its Subsidiaries and such other matters as Administrative Agent or any Lender may reasonably request in a reasonable time period in advance of such conference call.

~~(c) Not less frequently than once each week, commencing on March 14, 2022, the Borrower shall participate in a telephonic meeting with the Administrative Agent for the purposes of, without limitation, discussing the Loan Parties' Qualified Cash and Cash Flow Forecast, the status of any refinancing transactions and the status of any potential sale or other monetization transactions, including a VitaCare Sale and such other matters as Administrative Agent may reasonably request.~~

Section 5.8 Compliance with Laws.

(a) Each Loan Party will comply, and shall cause each of Borrower's Subsidiaries, to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), in each case, non-compliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Without limiting the generality of the foregoing, each Loan Party shall, and shall cause each of Borrower's Subsidiaries to, comply with all FDA Laws and Public Health Laws, and with all applicable Federal Health Care Program Laws, in each case, except where the failure to comply ~~would~~could not reasonably be expected to result, either individually or in the aggregate, in Material Regulatory Liabilities. All Products developed, manufactured, tested, investigated, distributed or marketed by or on behalf of the Loan Parties and Borrower's Subsidiaries that are subject to the jurisdiction of the FDA ~~or any comparable Governmental Authority~~ have been and shall be developed, tested, manufactured, investigated, distributed and marketed in compliance with the FDA Laws and any other Requirement of Law, ~~including, without limitation, pre-market notification, good manufacturing practices, labeling, advertising, record keeping, and adverse event reporting, in each case,~~ except where the failure to comply ~~would~~could not reasonably be expected to result, either individually or in the aggregate, in Material Regulatory Liabilities.

Section 5.9 Environmental.

(a) Each Loan Party shall (i) keep its owned real property free of any Environmental Liens; (ii) maintain and comply in all material respects with all Governmental Authorizations required under applicable Environmental Laws, except as any such failure which could not reasonably be expected to result in a Material Adverse Effect; and (iii) take all steps to prevent any Release of Hazardous Materials from any property owned or operated by any Loan Party, except as any such failure would not reasonably be expected to result in a Material Adverse Effect.

(b) The Loan Parties shall promptly (but in any event within ten (10) Business Days) (i) notify Administrative Agent in writing (A) of any material Environmental Claims asserted against or

material Environmental Liabilities and Costs of any Loan Party, and (B) any notice of Environmental Lien filed against any owned real property, and (ii) provide such other documents and information as reasonably requested by Administrative Agent in relation to any matter pursuant to this Section 5.9(b).

Section 5.10 Subsidiaries. In the event that any Person becomes a Subsidiary of Company ~~,Company~~ (including pursuant to a Permitted Acquisition), Company shall (a) within ~~10~~30 Business Days of such Person becoming a Subsidiary (or such later time as is ~~consented to~~reasonably agreed by Administrative Agent) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(b), 3.1(f) and 3.1(i). With respect to each such Subsidiary, Company shall send to Administrative Agent written notice within 10 Business Days of such Person becoming a Subsidiary (or such later time as is ~~consented to~~reasonably agreed by Administrative Agent) setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement Schedules 4.1 and 4.2 for all purposes hereof.

Section 5.11 Further Assurances. At any time or from time to time upon the ~~written~~reasonable request of Administrative Agent in writing, each Loan Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things within its control as Administrative Agent may reasonably request in order to effect fully the purposes of the Loan Documents, including providing Lenders with any information reasonably requested pursuant to Section 10.21. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Borrower's Subsidiaries and all of the outstanding Capital Stock of Borrower's Subsidiaries, to the extent permitted under ~~any~~the Loan ~~Document~~Documents. Notwithstanding anything to the contrary in the foregoing or anywhere else in this Agreement or in any other Loan Document, unless requested by the Administrative Agent in its reasonable discretion, none of the Loan Parties or any of their Subsidiaries shall be required, nor shall the Administrative Agent or any Lender be authorized, to take any action with respect to any assets or property of any Loan Party located (or arising under the laws of any jurisdiction) outside of the United States.

Section 5.12 Control Agreements. Each of Borrower and each Guarantor Subsidiary shall hold all of its cash and Cash Equivalents in a Deposit Account or Securities Account (other than any Excluded Accounts) subject to a Control Agreement. All such Control Agreements shall provide for "springing" cash dominion with respect to each such account that is not an Excluded Account, including each disbursement account. With respect to each Control Agreement providing for "springing" cash dominion, Administrative Agent will not deliver to the relevant depository institution a notice or other instruction which provides for exclusive control over such account by Administrative Agent until an Event of Default has occurred and is continuing.

Section 5.13 [Post-Closing Matters. Company shall, and shall cause each of the Loan Parties to, satisfy the requirements set forth on Schedule 5.13 on or before the date specified for such requirement or such later date as is consented to by Administrative Agent.][2]

~~Section 5.14 CARES Act Loan. The Loan Parties shall:~~

~~(a) Comply, in all material respects, with the SBA's terms and conditions applicable to the CARES Act Loan;~~

~~(b) use the proceeds of the CARES Act Loans solely for "allowable uses" of proceeds of an SBA PPP Loan as described in Section 1102 of the CARES Act and solely to the extent such uses permit all of the CARES Act Loan to be eligible for forgiveness;~~

~~(c) promptly (and in any event within five (5) Business Days) upon receipt or delivery thereof, as applicable, provide copies of all material documents, applications and correspondence with any applicable lender or any applicable Governmental Authority received or delivered relating to the CARES Act Loan, including with respect to loan forgiveness; and~~

~~(d) promptly apply for forgiveness of the CARES Act Loan and submit all documents required to obtain forgiveness or other relief of the CARES Act Loan by all deadlines required by the CARES Act (and provide documentation and status of such forgiveness to the Administrative Agent upon the Administrative Agent's reasonable request).~~

ARTICLE VI

NEGATIVE COVENANTS

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than any such contingent obligations or liabilities hereunder that by the express terms thereof survive such payment in full of all Obligations), such Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article VI.

[2] NTD: TBD if needed.

Section 6.1 Indebtedness. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, in each case, except Permitted Indebtedness.

Section 6.2 Liens. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, in each case, except Permitted Liens. Holdings shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to the Capital Stock of Borrower or any of its Subsidiaries.

Section 6.3 Material ~~Contracts~~Contract. None of Borrower or any of its Subsidiaries shall agree to any set-off, counterclaim or other deduction under or with respect to ~~any~~the Material Contract, other than any such set-off, counterclaim or other deduction that is in the ordinary course of business and is explicitly required or permitted by the terms of ~~such~~the Material Contract as in effect on the date hereof or as amended from time to time in accordance with the terms hereof. Borrower and its Subsidiaries shall not materially breach ~~any~~the Material Contract or otherwise default under ~~any~~the Material Contract in such a manner as could reasonably be expected to give rise to a termination right of any other party to ~~such~~the Material Contract.

Section 6.4 No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an Asset Sale permitted under Section 6.9 and (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) no Loan Party nor any of Borrower's Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, in each case, except Permitted Liens.

Section 6.5 Restricted Junior Payments. No Loan Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment, in each case, except for:

(a) cashless repurchases of Capital Stock in the ordinary course of business in Borrower or any Subsidiary thereof deemed to occur upon exercise of stock options or warrants if such Capital Stock represents a portion of the exercise price of such options or warrants;

(b) ~~any Loan Party may make Restricted Junior Payments in the form of its payment in cash to the relevant Governmental Authority of any Taxes payable as a result of the vesting of Capital Stock in connection with equity based compensation plans; provided, the aggregate amount of all~~distributions to any parent entity of Holdings for customary accounting, human resources, management and legal services actually performed for the Loan Parties and their Subsidiaries in the ordinary course of business, provided, that, the aggregate amount of such ~~Restricted Junior Payments~~payments shall not exceed $~~10,000,000 during the term of this Agreement; or~~2,000,000 in any twelve (12) month period; or

(c) ~~Borrower may make payments of cash in lieu of fractional shares in connection with stock dividends, splits or combinations or conversions or exercises of convertible securities.~~if the Borrower is included in a group filing a consolidated, combined or similar income tax return with any direct or indirect parent company, distributions to such direct or indirect parent company to pay the relevant consolidated, combined, unitary or similar income Tax liabilities, when and as due, attributable to taxable income of the Borrower and its Subsidiaries; provided that such Restricted Junior Payments made pursuant to this Section 6.5(c) shall not exceed the amount of income Tax that the Borrower would pay if it were the parent entity of a group filing such consolidated, combined or similar tax return with the applicable Subsidiaries.

Section 6.6 Restrictions on Subsidiary Distributions. Except as provided herein, no Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind, in each case, except for Permitted Liens, on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (c) make loans or advances to Company or any other Subsidiary of Company, or (d) transfer any of its property or assets to Company or any other Subsidiary of Company other than restrictions (i) in agreements evidencing purchase money Indebtedness permitted by clause (g) of the definition of Permitted Indebtedness that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement. No Loan Party shall, nor shall it permit its Subsidiaries to, enter into any Contractual Obligations which would prohibit a Subsidiary of Borrower from being a Loan Party.

Section 6.7 Investments. Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except Permitted Investments. Notwithstanding the foregoing, in no event shall any Loan Party make any Investment which results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.5.

Section 6.8 Financial Covenants.

(a) Minimum Qualified Cash. Borrower shall not permit Qualified Cash to be less than $~~10,000,000~~5,000,000 at any time.

(b) Minimum Revenue. Borrower shall not permit Product Revenue for any Fiscal Quarter set forth below to be less than the amount set forth opposite such Fiscal Quarter:

| Fiscal Quarter Ending | Product Revenue |
|---|---|
| ~~December 31, 2020~~ | ~~$20,000,000~~ |
| ~~March 31, 2021~~ | ~~$17,000,000~~ |
| ~~June 30, 2021~~ | ~~$20,000,000~~ |
| ~~September 30, 2021~~ | ~~$23,000,000~~ |
| ~~December 31, 2021~~ | ~~$26,500,000~~ |

| Fiscal Quarter Ending | Product Revenue |
|---|---|
| ~~June 30, 2022~~ | ~~$35,000,000~~ |
| ~~September 30, 2022~~ | ~~$40,000,000~~ |
| ~~December 31, 2022~~ | ~~$45,000,000~~ |
| ~~March 31, 2023~~ | ~~$50,000,000~~ |
| June 30, 2023 | $~~55,000,000~~20,000,000 |
| September 30, 2023 | $~~60,000,000~~20,000,000 |
| ~~December 31, 2023~~ | ~~$65,500,000~~ |
| ~~March 31, 2024~~ | ~~$70,000,000~~ |

Section 6.9 Fundamental Changes; Disposition of Assets; Acquisitions. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, or otherwise enter into or consummate any Asset Sale, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever (including, without limitation, any Product (including, without limitation, any intellectual property rights related thereto) and any Product Agreement (including, without limitation, any of Company's rights thereunder)), whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and Capital Expenditures in the ordinary course of business) all or substantially all of the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Borrower may be merged with or into Company or any Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any Guarantor Subsidiary; provided, in the case of such a merger,

Company or such Guarantor Subsidiary, as applicable shall be the continuing or surviving Person. Notwithstanding anything herein to the contrary, neither Borrower nor any of its Subsidiaries shall divide or enter into any plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law);

(b) (i) ~~any Asset Sale of VitaCare (which shall include any VitaCare Business Assets sold or transferred by a Loan Party in connection therewith to the extent such VitaCare Business Assets are not contributed by such Loan Party to VitaCare in connection therewith) so long as (A) the proceeds thereof are not less than the sum of (y) $30,000,000 plus (z) the VitaCare Business Assets Excess Amount (of which not less than the sum of (y) $20,000,000 plus (z) the VitaCare Business Assets Excess Amount shall be in Cash) and (B) such proceeds shall be applied as required by Section 2.10(a)(ii) (a "VitaCare Sale") (it being understood and agreed that it is intended that the assets and other property to be sold pursuant to the VitaCare Sale shall be sold free and clear of the Administrative Agent's and the Lenders' security interest, subject to the execution and delivery by the Administrative Agent (at the Loan Parties' expense) of such release documentation as may be reasonably requested by the Loan Parties and reasonably acceptable to the Administrative Agent); provided that, if following any VitaCare Sale the Loan Parties retain any interest, directly or indirectly, in the VitaCare Business Assets pursuant to which any Loan Party has any primary or contingent obligations payable in cash or Cash Equivalents, any obligations of the Loan Parties with respect to such retained interest shall be consented to by the Administrative Agent in writing (such consent not to be unreasonably withheld, delayed or conditioned (it being understood and agreed by the Administrative Agent and the Lenders that such consent shall not require any economic consideration, other consideration or any repayment of the Obligations (other than any payment required by either Section 2.8(y) or Section 2.10(a)(ii)(A), as applicable) as a condition thereof));~~ [reserved];

(ii) ~~any merger or other reorganization of VitaCare pursuant to an "F reorganization" in connection with the VitaCare Sale, as consented to by the Administrative Agent in writing (such consent not to be unreasonably withheld, delayed or conditioned (it being understood and agreed by the Administrative Agent and the Lenders that such consent shall not require any economic consideration, other consideration or any repayment of the Obligations (other than any payment required by either Section 2.8(y) or Section 2.10(a)(ii)(A), as applicable) as a condition thereof)); and~~ [reserved]; and

(iii) any ~~other~~ Asset Sales (other than (A) ~~subject to Section 6.9(d),~~ those constituting Permitted Product Transactions and (B) any ~~other~~ Asset Sale in respect of the Products or the Product Patents) in any Fiscal Year, the proceeds of which are less than $~~10,000,000~~5,000,000 with respect to any single Asset Sale or series of related Asset Sales made within ~~the same Fiscal Year~~a twelve month period; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by officers of Company or the Board of Directors of Company (or similar governing body)), (2) no less than 85% thereof shall be paid in Cash, and (3) if and to the extent required by Section 2.10(a)(ii), the proceeds thereof shall be applied as required by Section 2.10(a)(ii);

(c) Permitted Acquisitions and other Permitted Investments;

(d) Asset Sales constituting Permitted Product Transactions; provided that (i) no Event of Default shall have occurred and be continuing or would result therefrom (it being understood that this clause (i) shall not prohibit the continued performance by any Loan Party in the ordinary course of business under contracts entered into prior to the occurrence of any such Event of Default) and (ii) the Net Proceeds thereof shall be applied as and to the extent required by Section 2.10(a)(i).;

(e) Borrower or any Subsidiary thereof may sell inventory and immaterial assets in the ordinary course of business;

(f) Dispositions of obsolete or worn out, retired or surplus property, whether now owned or hereafter acquired, in the ordinary course of business;

(g) Borrower or any Subsidiary thereof may surrender or waive contractual rights and settle or waive contractual or litigation claims in the ordinary course of business; and

(h) the sale or discount with recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof.

Section 6.10 Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, no Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Loan Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

Section 6.11 Sales and Lease Backs. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Borrower or any of its Subsidiaries) or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Loan Party to any Person (other than Borrower or any of its Subsidiaries) in connection with such lease.

Section 6.12 Transactions with Shareholders and Affiliates. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Borrower or of any such holder; provided, that the Loan Parties and Borrower's Subsidiaries may enter into or permit to exist any such transaction if both Administrative Agent has consented thereto in writing prior to the consummation thereof and the terms of such transaction are not less favorable to Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; further, provided, further, that the foregoing restrictions shall not apply to any of the following:

(a) any transaction among the Loan Parties expressly permitted hereunder;

(b) reasonable and customary fees paid to members of the Board of Directors (or similar governing body) of Borrower and its Subsidiaries; or any parent entity of Holdings to the extent such fee relates to the Loan Parties and their Subsidiaries;

(c) compensation arrangements for officers and other employees of Borrower and its Subsidiaries or any parent entity of Holdings to the extent such compensation relates to the Loan Parties and their Subsidiaries entered into in the ordinary course of business~~; (d) any transaction between a Loan Party and any direct or indirect holder of not more than 20% of any class of Capital Stock of Borrower so long as (i) such transaction is between a Loan Party and a federally regulated financial institution which occurs on an arm's length basis in the ordinary course such Loan Party's business consistent with past practice, (ii) such transaction involves the ordinary course financial services provided by such financial institution to such Loan Party, excluding any loan or other form of Indebtedness which is not Permitted Indebtedness, and (iii) such transaction is not otherwise prohibited under the terms of this Agreement~~; and

(d) (e) transactions described in Schedule 6.12.

Section 6.13 Conduct of Business. From and after the Closing Date, no Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by such Loan Party on the Closing Date (or any other business reasonably related thereto).

Section 6.14 Changes to Certain Agreements and Organizational Documents. No Loan Party shall (i) amend or permit any amendments to any Loan Party's Organizational Documents, including, without limitation, any amendment, modification or change to any of Loan Party's Organizational Documents to effect a division or plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law); or (ii) amend or permit any amendments by any Loan Parties to, or terminate or waive any provision of, ~~any~~the Material Contract if such amendment, termination, or waiver would be materially adverse to Administrative Agent or the Lenders (it being understood that any amendment to ~~a~~the Material Contract to permit set-off or other deduction of amounts payable thereunder (other than any set-off or other deduction in the ordinary course of business that does not increase the obligations of a Loan Party) shall be deemed to be materially adverse to the Administrative Agent and the Lenders).

Section 6.15 Accounting Methods. The Loan Parties will not and will not permit any of their Subsidiaries to modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

Section 6.16 Deposit Accounts. No Loan Party shall establish or maintain a Deposit Account (other than an Excluded Account) or a Securities Account that is not subject to a Control Agreement.

Section 6.17 Prepayments of Certain Indebtedness. No Loan Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (a) the Obligations, and (b) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section ~~6.9 and (c) Indebtedness under the CARES Act Loan.~~6.9.

Section 6.18 Anti-Terrorism Laws. None of the Loan Parties (nor any of their Affiliates that are controlled by the Loan Parties) or agents shall:

(a) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person,

(b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the OFAC Sanctions Programs or

(c) engage in or conspire to engage in any transaction that evades or avoids, or hasthe purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the OFAC Sanctions Programs, the USA PATRIOT Act or any other Anti-Terrorism Law.

~~The Company shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Company's compliance with this Section 6.18.~~

Section 6.19 Anti-Corruption Laws. No Loan Party shall use, or permit any of its Subsidiaries to use, directly or indirectly, any of the proceeds of any Loan for the purpose of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law.

Section 6.20 Real Property. None of the Borrower or any of its Subsidiaries shall own any real property.

ARTICLE VII

GUARANTY

Section 7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations").

Section 7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 7.2, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

Section 7.3 Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Company's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

Section 7.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Company and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor) of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Company or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or

enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

Section 7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

Section 7.6 Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full and the Delayed Draw Term Loan Commitments have been terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Company with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Company, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full and the Delayed Draw Term Loan Commitments have been terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Company, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

Section 7.7 Subordination of Other Obligations. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by such Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of such Guarantor under any other provision hereof.

Section 7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full and the Delayed Draw Term Loan Commitments have been terminated. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Section 7.9 Authority of Guarantors or Company. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, directors or agents acting or purporting to act on behalf of any of them.

Section 7.10 Financial Condition of Company. Any Credit Extension may be made to Company or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Loan Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of

Company and of all circumstances bearing upon the risk of non-payment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

Section 7.11 Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other Guarantor or by any defense which Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Company of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Company, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Section 7.12 Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such sale or disposition.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) the principal of and premium, if any, on any Term Loan whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Term Loan, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (iii) within three (3) Business Days when due any interest on any Term Loan or any fee or any other amount due hereunder; or

(b) Default in Other Agreements. (i) Failure of any Loan Party or any of Borrower's Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of $5,000,000 or more or with an aggregate principal amount of $5,000,000 or more, in each case beyond the grace or cure period, if any, provided therefor; or (ii) breach or default by any Loan Party with respect to any other material term of (A) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above, or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness referred to in clause (i) above, in each case beyond the grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) or to require the prepayment, redemption, repurchase or defeasance of, or to cause Borrower or any of Borrower's Subsidiaries to make any offer to prepay, redeem, repurchase or defease such Indebtedness, prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Covenants. Failure of any Loan Party to perform or comply with any term or condition contained in (i) Section 2.2, Section 5.1(a~~) (m~~), Section 5.1(~~e) (t~~g), Section ~~5.2, Section 5.3, Section 5.5, Section 5.7(c), Section 5.8, Section 5.9, Section 5.12, Section 5.13, Section 5.15 or Article VI or (ii)~~5.2 (solely with respect to Holdings and the Borrower), Section 5.8, Section 5.13 or Article VI, (ii) Section 5.1(b)-(d) and Section 5.1 (j), and, solely in the case of this clause (ii), such failure shall continue unremedied for 5 Business Days following notice of such failure, or (iii) Section 5.1(e), Section 5.1(f), Section 5.1 (h)-(i), Section 5.1(k)-(r), Section 5.3, Section 5.4, Section 5.5, Section 5.6, Section 5.7(a)-(b), Section ~~5.10 or~~5.10, Section ~~5.11,~~5.11 or Section 5.12, and, solely in the case of this clause (~~ii~~iii), such failure shall continue unremedied for ~~10~~15 Business Days following notice of such failure; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Loan Party in any Loan Document or in any statement or certificate at any time given by any Loan Party or any of Borrower's Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an Authorized Officer of such Loan Party becoming aware of such default, or (ii) receipt by Company of written notice from Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Borrower or any of its Subsidiaries or Holdings in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Borrower or any of its Subsidiaries or Holdings under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or any of its Subsidiaries or Holdings, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Borrowers or any of its Subsidiaries or Holdings for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower or any of its Subsidiaries or Holdings, and any such event described in the foregoing clause (i) or (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Borrower or any of its Subsidiaries or Holdings shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Borrower or any of its Subsidiaries or Holdings shall make any assignment for the benefit of creditors; or (ii) Borrower or any of its Subsidiaries or Holdings shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors (or similar governing body) of Borrower or any of its Subsidiaries or Holdings shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $5,000,000 or (ii) in the aggregate at any time an amount in excess of $5,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree by a Governmental Authority having appropriate jurisdiction shall be entered against any Loan Party or any of its Subsidiaries or Holdings decreeing the dissolution or split up of such Loan Party or any of its Subsidiaries or Holdings and such order shall remain undischarged or unstayed for a period in excess of forty-five days; or

(j) Change of Control. A Change of Control shall occur; or

(k) Guaranties, Collateral Documents and other Loan Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Administrative Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Administrative Agent or any Secured Party to take any action within its control, or (iii) any Loan Party shall contest the validity or enforceability of any Loan

Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party; or

(l) Proceedings. The indictment of any Loan Party or any of its Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party or any of its Subsidiaries pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of such Person; or

(m) ERISA. The imposition of a Lien pursuant to the Internal Revenue Code or ERISA on any Loan Party with respect to any Pension Plan or Multiemployer Plan; or

(n) Material ~~Contracts~~Contract. The termination of ~~any~~the Material Contract by Company or any other party thereto unless ~~such~~the Material Contract is contemporaneously replaced by or substituted with a substantially similar contract (i) with another Person who is not a Loan Party and (ii) containing terms and conditions that (A) taken as a whole are substantially similar to or better than the terms and conditions of the terminated Material Contract or ~~any other similar Material Contract then in existence or~~ (B) are reasonably acceptable to Administrative Agent; ~~or~~

(o) ~~Cessation of Development or Commercialization. At any time prior to February 15, 2021, Borrower ceases using commercially reasonable efforts to develop or commercialize any Specified Product Component; or~~Capital Contribution Agreement. At any time after the Amendment No. 11 Effective Date (i) the Capital Contribution Agreement for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or the Shareholders shall repudiate their respective obligations thereunder or (ii) an Investor Event of Default (as defined in the Capital Contribution Agreement) shall have occurred and be continuing under the Capital Contribution Agreement.

~~(p) Termination of Merger or Tender Offer. (i) The Merger Agreement shall have terminated for any reason or (ii) the public tender offer commenced by Athene Merger Sub, Inc., a Nevada corporation ("Merger Sub"), for all of the Borrower's outstanding common stock shall not have commenced by June 10, 2022, or, after having been commenced, shall have terminated or been withdrawn.~~

Section 8.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Administrative Agent shall at the request of the Required Lenders:

(a) declare all or any portion of the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Loan Party; and/or

(b) exercise on behalf of themselves and the Lenders all rights and remedies available to them and the Lenders under the Loan Documents or applicable law; provided, that upon the occurrence of any event specified in Section 8.1(f) or (g) above, the unpaid principal amount of all outstanding Term Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Administrative Agent or any Lender.

Section 8.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

Section 8.4 Cure. In the event that on any day the Borrower fails to comply with the requirements of Section 6.8(a), the Borrower shall be obligated to issue and, pursuant to the Capital Contribution Agreement, the Shareholders shall be obligated to purchase, Permitted Cure Equity for cash

(the "Cure Proceeds"); provided that (a) the Cure Proceeds are actually received by the Borrower no later than the date that is ten (10) Business Days following the date of any such failure, (b) the Cure Proceeds shall be deposited in a Deposit Account subject to a Control Agreement, (c) each receipt of Cure Proceeds shall not be less than the greater of (i) $1,000,000 and (ii) the aggregate amount necessary to cure such Event of Default under Section 6.8(a), (d) pursuant to the Capital Contribution Agreement, from time to time during the term of this Agreement, the Shareholders shall be obligated to purchase Permitted Cure Equity from, and provide Cure Proceeds to, the Borrower until the aggregate amount of Cure Proceeds received by the Borrower is $15,000,000. If, after giving effect to the Borrower's receipt of Cure Proceeds the Borrower is in compliance with the financial covenant set forth in Section 6.8(a), the requirements of such Section shall be deemed to be satisfied as of the date of the initial failure with the same effect as though there had been no failure to comply on such date, and the applicable breach or default of such Section 6.8(a) that had occurred shall be deemed cured for all purposes of this Agreement and the other Loan Documents. The parties hereby acknowledge that this Section may not be relied on for any other purposes under this Agreement other than to determine compliance with Section 6.8(a).

## ARTICLE IX

## ADMINISTRATIVE AGENT

Section 9.1 Appointment of Administrative Agent.

(a) Sixth Street is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Sixth Street, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents to perform, exercise and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations or otherwise related to any of same to the extent reasonably incidental to the exercise by Administrative Agent of the rights and remedies specifically authorized to be exercised by Administrative Agent by the terms of this Agreement or any other Loan Parties.

(b) Administrative Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article IX are solely for the benefit of Administrative Agent and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries.

Section 9.2 Powers and Duties. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees Administrative Agent shall not have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

Section 9.3 General Immunity.

(a) No Responsibility for Certain Matters. Administrative Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Administrative Agent to Lenders or by or on behalf of any Loan Party to Administrative Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall Administrative Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Term Loans or the component amounts thereof. In addition, Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Disqualified Institution.

(b) Exculpatory Provisions. Neither Administrative Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by Administrative Agent under or in connection with any of the Loan Documents except to the extent caused by Administrative Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to Events of Default in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of the Lenders, unless Administrative Agent shall have received written notice from a Lender or the Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." Administrative Agent will notify the Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to any such Default or Event of Default

as may be directed by the Required Lenders in accordance with Article VIII; provided, however, that unless and until Administrative Agent has received any such direction, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.4 Administrative Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Term Loans, Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Lenders.

Section 9.5 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender re presents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loans or at any time or times thereafter, and Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by Administrative Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls, or owns or controls any Person owning or controlling, any trade debt or Indebtedness of any Loan Party other than the Obligations or any Capital Stock of any Loan Party and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase any trade debt or Indebtedness of any Loan Party other than the Obligations or Capital Stock described in clause (i) above without the prior written consent of Administrative Agent.

Section 9.6 Right to Indemnity. EACH LENDER, IN PROPORTION TO ITS PRO RATA SHARE, SEVERALLY AGREES TO INDEMNIFY ADMINISTRATIVE AGENT, ITS AFFILIATES AND ITS RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, MEMBERS, INVESTORS, ADVISORS, PARTNERS, EMPLOYEES AND AGENTS OF ADMINISTRATIVE AGENT (EACH, AN "INDEMNITEE AGENT PARTY"), TO THE EXTENT THAT SUCH INDEMNITEE AGENT PARTY SHALL NOT HAVE BEEN REIMBURSED BY ANY LOAN PARTY, FOR AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES (INCLUDING COUNSEL FEES AND DISBURSEMENTS) OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SUCH INDEMNITEE AGENT PARTY IN EXERCISING ITS POWERS, RIGHTS AND REMEDIES OR PERFORMING ITS

DUTIES HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS OR OTHERWISE IN ITS CAPACITY AS SUCH INDEMNITEE AGENT PARTY IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; PROVIDED, NO LENDER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM SUCH INDEMNITEE AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL, NON-APPEALABLE ORDER. IF ANY INDEMNITY FURNISHED TO ANY INDEMNITEE AGENT PARTY FOR ANY PURPOSE SHALL, IN THE OPINION OF SUCH INDEMNITEE AGENT PARTY, BE INSUFFICIENT OR BECOME IMPAIRED, SUCH INDEMNITEE AGENT PARTY MAY CALL FOR ADDITIONAL INDEMNITY AND CEASE, OR NOT COMMENCE, TO DO THE ACTS INDEMNIFIED AGAINST UNTIL SUCH ADDITIONAL INDEMNITY IS FURNISHED; PROVIDED, IN NO EVENT SHALL THIS SENTENCE REQUIRE ANY LENDER TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT IN EXCESS OF SUCH LENDER'S PRO RATA SHARE THEREOF; AND PROVIDED FURTHER, THIS SENTENCE SHALL NOT BE DEEMED TO REQUIRE ANY LENDER TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT DESCRIBED IN THE PROVISO IN THE IMMEDIATELY PRECEDING SENTENCE.

Section 9.7 Successor Administrative Agent.

(a) Administrative Agent may resign at any time by giving thirty days' (or such shorter period as shall be agreed by the Required Lenders) prior written notice thereof to Lenders and Company. Upon any such notice of resignation, Required Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders appoint a successor Administrative Agent from among the Lenders. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, securities or Capital Stock and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent, as applicable, hereunder to an Affiliate of Sixth Street without the prior written consent of, or prior written notice to, Company or the Lenders; provided that Company and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent

provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Loan Documents.

(c) Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of Section 9.3, Section 9.6 and of this Section 9.7 shall apply to any of the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of Section 9.3, Section 9.6 and of this Section 9.7 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have the rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 9.8 Collateral Documents and Guaranty.

(a) Administrative Agent under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, Company, Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Administrative Agent, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or any sale of the Collateral in a case under the Bankruptcy Code, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale.

Section 9.9 Agency for Perfection. Administrative Agent and each Lender hereby appoints each other Lender as agent and bailee for the purpose of perfection the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and Administrative Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Lenders as secured party. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefore shall deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions. In addition, Administrative Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 9.10 Reports and Other Information; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Administrative Agent furnish such Lender or Administrative Agent, promptly after it becomes available, a copy of each field audit or examination report with respect to Borrower or its Subsidiaries (each a "Report" and collectively, "Reports") prepared by or at the request of Administrative Agent, and Administrative Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Administrative Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Administrative Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower' and its Subsidiaries' books and records, as well as on representations of such Person's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 10.17, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Administrative Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Company, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Company, and (ii) to pay and protect, and indemnify, defend and hold Administrative Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Administrative Agent and any such other Lender or Agent preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender or Agent.

In addition to the foregoing: (x) any Lender may from time to time request of Administrative Agent in writing that Administrative Agent provide to such Lender a copy of any report or document provided by Borrower or its Subsidiaries to Administrative Agent that has not been contemporaneously provided by Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Administrative Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Administrative Agent is entitled, under any provision of the Loan Documents, to request additional reports

or information from Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Administrative Agent to exercise such right as specified in such Lender's notice to Administrative Agent, whereupon Administrative Agent promptly shall request of Company the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Company or such Subsidiary, Administrative Agent promptly shall provide a copy of same to such Lender, and (z) any time that Administrative Agent renders to Company a statement regarding the Loan Account, Administrative Agent shall send a copy of such statement to each Lender.

Section 9.11 Protective Advances. Subject to the limitations set forth below, Administrative Agent is authorized by Company and the Lenders, from time to time in Administrative Agent's sole discretion (but Administrative Agent shall have absolutely no obligation to), to make disbursements or advances to Company, which Administrative Agent, in its sole discretion, deems necessary or desirable

(i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by Company pursuant to the terms of this Agreement and the other Loan Documents, including, without limitation, payments of principal, interest, fees and reimbursable expenses (any of such Loans are in this clause (c) referred to as "Protective Advances"); provided, that Administrative Agent shall not make any Protective Advance (other than with respect to the payment of payroll, insurance premiums and rent or leased properties) unless an Event of Default has occurred and is continuing or Borrower has consented to the making of such Protective Advance. Protective Advances may be made even if the conditions precedent set forth in Article III have not been satisfied. The interest rate on all Protective Advances shall be at the Base Rate plus the Applicable Margin for Term Loans. Each Protective Advance shall be secured by the Liens in favor of Collateral Agent in and to the Collateral and shall constitute Obligations hereunder. The Protective Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 2.12(i). Company shall pay the unpaid principal amount and all unpaid and accrued interest of each Protective Advance on the earlier of the Term Loan Maturity Date and the date on which demand for payment is made by the Administrative Agent. Administrative Agent shall notify each Lender and Company in writing in advance of each such Protective Advance, which notice shall (y) include a description of the purpose of such Protective Advance and (z) indicate the date on or after which such Protective Advance may be made. Without limitation to its obligations pursuant to Section 9.6, each Lender agrees that it shall make available to Administrative Agent, upon such Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Protective Advance. If such funds are not made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for three Business Days and thereafter at the Base Rate.

## ARTICLE X

## MISCELLANEOUS

Section 10.1 Notices.

(a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Loan Party, Administrative Agent, shall be sent to such Person's address as set forth on Appendix ~~B~~A or in the other relevant Loan Document, and in the case of any Lender, the address as indicated on Appendix ~~B~~A or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served or sent by United States certified mail, return receipt, or courier service and shall be deemed to have been given when delivered in person or by certified mail or courier service and signed for against receipt thereof; provided, no notice to Administrative Agent shall be effective until received by Administrative Agent.

(b) Electronic Communications.

(i) Administrative Agent and Company may, in its respective reasonable discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it and agreed to in writing within a reasonable time prior to such delivery of such notice and other communications; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

(ii) Subject to the foregoing clause (i), (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications to Lenders posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

Section 10.2 Expenses. Subject to Section 5.6, whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (a) all of Administrative Agent's actual and reasonable out-of-pocket costs and expenses of preparation of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (b) all the reasonable and documented out-of-pocket fees, expenses and disbursements of counsel to Administrative Agent in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (c) all the actual documented costs and reasonable expenses of creating and perfecting Liens in favor of Administrative Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to Administrative Agent and of counsel providing any opinions that Administrative Agent or Required Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (d) all of Administrative Agent 's actual documented costs and reasonable and documented out-of-pocket fees, expenses for, and disbursements of any of Administrative Agent's auditors, accountants, or consultants, and all reasonable and documented out-of-pocket attorneys' fees (including expenses and disbursements of outside counsel) incurred by Administrative Agent; (e) all the actual documented costs and reasonable and documented expenses (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Administrative Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (f) all the actual documented costs and reasonable and documented out-of-pocket expenses of Administrative Agent and Lenders in connection with the attendance at any meetings in connection with this Agreement and the other Loan Documents (including the meetings referred to in Section 5.7); (g) all other actual and reasonable and documented out-of-pocket costs and expenses incurred by Administrative Agent in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence and continuance of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by Administrative Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings.

Section 10.3 Indemnity.

(a) IN ADDITION TO THE PAYMENT OF EXPENSES PURSUANT TO SECTION 10.2, WHETHER OR NOT THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSUMMATED, EACH LOAN PARTY AGREES TO DEFEND (SUBJECT TO INDEMNITEES' SELECTION OF COUNSEL), INDEMNIFY, PAY AND HOLD HARMLESS, ADMINISTRATIVE AGENT AND LENDER, THEIR AFFILIATES AND THEIR RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, MEMBERS, INVESTORS, ADVISORS, PARTNERS, EMPLOYEES AND AGENTS OF ADMINISTRATIVE AGENT AND EACH LENDER (EACH, AN "INDEMNITEE"), FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; PROVIDED, NO LOAN PARTY SHALL HAVE ANY OBLIGATION TO ANY INDEMNITEE HEREUNDER WITH RESPECT TO (I) ANY INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL ORDER SUBJECT TO NO FURTHER APPEAL, OF THAT INDEMNITEE OR ANY OF ITS AFFILIATES OR (II) ANY SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HEREWITH OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE). TO THE EXTENT THAT THE UNDERTAKINGS TO DEFEND, INDEMNIFY, PAY AND HOLD HARMLESS SET FORTH IN THIS SECTION 10.3 MAY BE UNENFORCEABLE IN WHOLE OR IN PART BECAUSE THEY ARE VIOLATIVE OF ANY LAW OR PUBLIC POLICY, THE APPLICABLE LOAN PARTY SHALL CONTRIBUTE THE MAXIMUM PORTION THAT IT IS PERMITTED TO PAY AND SATISFY UNDER APPLICABLE LAW TO THE PAYMENT AND SATISFACTION OF ALL INDEMNIFIED LIABILITIES INCURRED BY INDEMNITEES OR ANY OF THEM.

(b) To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against Lenders, Administrative Agent and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Company hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender, and their respective Affiliates is hereby authorized by each Loan Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Loan Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts (in whatever currency)) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Loan Party (in whatever currency) against and on account of the obligations and liabilities of any Loan Party to such Lender hereunder, the participations under the other Loan Documents, including all claims of any nature or description arising out of or connected hereto, or with any other Loan Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder, (b) the principal of or the interest on the Term Loans or any other amounts due hereunder shall have become due and payable pursuant to Article II and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such Lender different from the branch or office holding such deposit or obligation or such Indebtedness.

Section 10.5 Amendments and Waivers.

(a) Required Lenders' Consent. Subject to Section 10.5(b) and 10.5(b)(i), no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of the Borrower, Administrative Agent and the Required Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.6) or any fee payable hereunder;

(iv) extend the time for payment of any such interest or fees;

(v) reduce the principal amount of any Loan;

(vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(b)(i);

(vii) amend the definition of "Required Lenders" or "Pro Rata Share";

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Loan Documents;

(ix) subordinate any of the Obligations or any Lien created by this Agreement or any other Loan Document; or

(x) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall amend, modify, terminate or waive any provision of Article IX as the same applies to Administrative agent, or any other provision hereof as the same applies to the rights or obligations of Administrative Agent, in each case without the consent of Administrative Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Loan Party, on such Loan Party.

Section 10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Lenders. No Loan Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Loan Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 9.6, Indemnitees under Section 10.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Administrative Agent and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until an Assignment

Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(e). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Loans owing to it or other Obligations ~~(provided, however~~with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed); provided that (x) the consent of the Borrower shall not be required for any assignment of Loans or Commitments at any time when an Event of Default under Sections 8.1(a), (g) or (h) has occurred and is continuing and (y) no assignments shall be permitted to a Disqualified Institution; provided further, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitments~~)~~:

(i) to any Person meeting the criteria of clause (a) of the definition of the term of "Eligible Assignee" upon the giving of notice to Company and Administrative Agent in accordance with Section 10.1 of this Agreement; and

(ii) to any Person otherwise constituting an Eligible Assignee with the consent of Administrative Agent ~~and subject to the terms of the Assignment Letter~~; provided, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent).

(d) Mechanics. The assigning Lender and the permitted assignee thereof shall execute and deliver to Administrative Agent ~~(i)~~ an Assignment Agreement, together with such forms or certificates with respect to United States federal income Tax withholding matters pursuant to Section 2.15(e) as if such assignee were a Lender~~, and (ii) a joinder to the Assignment Letter~~.

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, any forms or certificates required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give written notice thereof to Company promptly (and in any event, within 30 days upon Administrative Agent's receipt and acceptance thereof; provided, such assignment shall be effective upon receipt and acceptance by Administrative Agent notwithstanding whether Administrative Agent delivers notice thereof to Company) and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws; (iv) such Lender does not own or control, or own or control any Person owning or controlling, any trade debt or Indebtedness of any Loan Party other than the Obligations or any Capital Stock of any Loan Party; and

(v) the representations and warranties set forth in Section 9.5 of this Agreement are true and correct with respect to such Lender as of the Closing Date or such applicable Effective Date.

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the later (i) of the "Effective Date" specified in the applicable Assignment Agreement or (ii) the date such assignment is recorded in the Register: (A) the permitted assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent such rights and obligations hereunder have been properly assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which

survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Loan Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (C) the Commitments shall be modified to reflect the Commitment of such assignee and any Commitment of such assigning Lender, if any; and (D) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Company shall issue and deliver new Notes, if so requested in writing by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(h) Participations.

(i) Each Lender shall have the right at any time, without the consent of, or notice to the Borrower, to sell one or more participations to any Person (other than Borrower, any of its Subsidiaries or any of its Affiliates or to a Disqualified Institution) in all or any part of its Commitments, Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Term Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Loan Documents) supporting the Loans hereunder in which such participant is participating. Company agrees that each participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.19(c) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(c); provided, a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless, at the time such participant is claiming such benefits, Company is notified of the participation sold to such participant and such participant agrees, for the benefit of Company, to comply with Section 2.15 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(ii) In the event that any Lender sells participations in its Commitments, Loans or in any other Obligation hereunder in accordance with and subject to the terms and conditions of the foregoing subclause (i), such Lender shall, acting solely for this purpose as a non-fiduciary agent of Company, maintain a register on which it enters the name of all participants in the Commitments, Loans or Obligations held by it and the principal amount (and stated interest thereon) of the portion of such Commitments, Loans or Obligations which are the subject of the participation (the "Participant Register"). A Commitment, Loan or Obligation hereunder may be participate in whole or in part only by registration of such participation on the Participant Register (and each Note shall expressly so provide). The Participant Register shall be available for inspection by Company at any reasonable time and from time to time upon reasonable prior notice.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, any Lender or Agent may assign, pledge and/or grant a security interest in, all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender or Agent or any of its Affiliates to any Person providing any loan, letter of credit or other extension of credit or financial arrangement to or for the account of such Lender or Agent or any of its Affiliates and any agent, trustee or representative of such Person (without the consent of, or notice to, or any other action by, any other party hereto), including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender or Agent, as between Company and such Lender or Agent, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; provided further, in no event shall such Person, agent,

trustee or representative of such Person or the applicable Federal Reserve Bank be considered to be a "Lender" or "Agent" or be entitled to require the assigning Lender or Agent to take or omit to take any action hereunder.

Section 10.7 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 2.14, 2.15, 2.19(c), 10.2, 10.3, 10.4, and 10.10 and the agreements of Lenders set forth in Section 2.13, 9.3(b) and 9.6 shall survive the payment of the Term Loans and the termination hereof.

Section 10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Administrative Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Loan Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 10.10 Marshalling; Payments Set Aside. Neither Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 10.11 Severability. In case any provision in or obligation hereunder or any Note or other Loan Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 10.12 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to Section 9.8, each Lender shall be entitled to protect and enforce its rights arising under this Agreement and the other Loan Documents and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 10.13 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 10.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 10.15 CONSENT TO JURISDICTION.

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY LOAN PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY HERETO IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NON-EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1 IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (IV) AGREES THAT ADMINISTRATIVE AGENT AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IF REQUIRED BY LAW.

(b) EACH PARTY HEREBY AGREES THAT PROCESS MAY BE SERVED ON IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES PERTAINING TO IT AS SPECIFIED IN SECTION 10.1. ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST ANY SUCH PARTY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE.

Section 10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.17 Confidentiality. Administrative Agent and Lender shall hold all non-public information (whether delivered prior to or after the Closing Date) regarding Company and its Subsidiaries and their businesses identified as such by Company (or in the case of information which has not been identified by Company as confidential, is similar to other information which has been identified as confidential and which is readily identifiable as confidential) and obtained by such Lender from Company or its Subsidiaries pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Company that, in any event, Administrative Agent or Lender may make (i) disclosures of such information to Affiliates of Administrative Agent or Lender and to their agents, advisors, directors and shareholders (and to other persons authorized by a Lender or Agent to organize, present or disseminate

such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by any such Lender of any Loans or any participations therein, (iii) disclosure to any rating agency when required by it, (iv) disclosure to any Lender's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the information, (v) disclosures of such information to any actual or potential investors and partners of Administrative Agent any Lender or their Affiliates, provided that prior to any disclosure, such investor or partner is informed of the confidential nature of the information, (vi) disclosures in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder and (vii) disclosure required or requested in connection with any public filings, whether pursuant to any securities laws or regulations or rules promulgated therefor (including the Investment Company Act of 1940 or otherwise) or representative thereof or by the National Association of Insurance Commissioners (and any successor thereto) or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, Administrative Agent and Lender shall make reasonable efforts to notify Company of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information and shall cooperate with any efforts of Company to seek confidential treatment of such information. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" and "tax structure" mean any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates or the parties to a transaction. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent and any Lender may, at its own expense, issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Loan Parties) (collectively, "Trade Announcements"). No Loan Party shall permit any of its Affiliates to, issue any Trade Announcement, press release or other public disclosure using the name, logo or otherwise referring to Administrative Agent, any Lender or any of its Affiliates without the consent of Administrative Agent or such Lender, except to the extent required to do so under applicable Requirements of Law and then, if practicable, only after consulting with Administrative Agent or such Lender. The obligations of confidentiality set forth in this Section 10.17 shall survive until the date that is 2 years following the termination of this Agreement; provided, that notwithstanding the foregoing, such obligations of confidentiality shall survive until the date that is 10 years following the ~~Closing~~Amendment No. 11 Effective Date in respect of (a) intellectual property and formulation technology information with respect to the Products and (b) information with respect to new drug applications for any product. Any information that remains subject to the confidentiality obligations of this Section 10.17 that is held by Administrative Agent or any Lender as of the date of the expiration of the applicable periods set forth in the preceding sentence shall thereafter be promptly destroyed by Administrative Agent or such Lender; provided, that any such information that is required to be held by Administrative Agent or such Lender following the expiration of the applicable period set forth in the preceding sentence shall continue to be subject to the confidentiality obligations set forth in this Section 10.17.

Section 10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for,

charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

Section 10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 10.20 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written notification of such execution and authorization of delivery thereof.

Section 10.21 PATRIOT Act Notice. Each Lender and Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the PATRIOT Act, it may be required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of the Loan Parties and other information that will allow such Lender or Agent, as applicable, to identify the Loan Parties in accordance with the PATRIOT Act.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

THERAPEUTICSMD, INC.

By: _____
Name:
Title:

VITAMEDMD, LLC

By: _____
Name:
Title:

BOCAGREENMD, INC.

By: _____
Name:
Title:

~~VITACARE PRESCRIPTION SERVICES, INC.~~

~~By:~~ _____
~~Name:~~
~~Title:~~

SIXTH STREET SPECIALTY LENDING, INC.,
as Administrative Agent and Lender

By: _____
Name:
Title:

TOP IV TALENTS, LLC,
as Lender

By: _____
Name:
Title:

TAO TALENTS, LLC,
as Lender

By: _____
Name:
Title:

**APPENDIX A-1**
**TO FINANCING AGREEMENT**

Initial Term Loan Commitment

| Lender | Initial Term Loan Commitment | Pro Rata Share |
|---|---|---|
| Sixth Street Specialty Lending, Inc. | $30,000,000.00 | 15.0% |
| TOP IV Talents, LLC | $50,000,000.00 | 25.0% |
| TAO Talents, LLC | $120,000,000.00 | 60.0% |
| **Total** | $200,000,000.00 | 100% |

**APPENDIX A-2**
**TO FINANCING AGREEMENT**

Delayed Draw A-1 Term Loan Commitments

| Lender | Delayed Draw A-1 Term Loan Commitment | Pro Rata Share |
|---|---|---|
| Sixth Street Specialty Lending, Inc. | $7,500,000.00 | 15.0% |
| TOP IV Talents, LLC | $12,500,000.00 | 25.0% |
| TAO Talents, LLC | $30,000,000.00 | 60.0% |
| **Total** | $50,000,000.00 | 100% |

**APPENDIX A-3**
**TO FINANCING AGREEMENT**

Delayed Draw A-2 Term Loan Commitments

| Lender | Delayed Draw A-2 Term Loan Commitment | Pro Rata Share |
|---|---|---|
| Sixth Street Specialty Lending, Inc. | $7,500,000.00 | 15.0% |
| TOP IV Talents, LLC | $12,500,000.00 | 25.0% |
| TAO Talents, LLC | $30,000,000.00 | 60.0% |
| **Total** | $50,000,000.00 | 100% |

~~APPENDIX B~~
**TO FINANCING AGREEMENT**

Notice Addresses

[THERAPEUTICSMD, INC.
951 Yamato Road, Suite 220
Boca Raton, FL 33431
Attention: James C. D'Arecca, Chief Financial Officer
Email: jdarecca@TherapeuticsMD.com

VITAMEDMD, LLC BOCAGREENMD, INC.
~~VITACARE PRESCRIPTION SERVICES, INC.~~

951 Yamato Road, Suite 220
Boca Raton, FL 33431
Attention: James C. D'Arecca, Chief Financial Officer
Email: ~~jdarecca@TherapeuticsMD.com~~jdarecca@TherapeuticsMD.com]3

in each case, with a copy to:

~~DLA Piper LLP~~
~~200 South Biscayne Boulevard~~
~~Suite 2500~~
~~Miami, FL 33131~~
~~Attention: Joshua M. Samek~~
~~Email: joshua.samek@dlapiper.com~~

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Marshall P. Shaffer, P.C.; Kathryn Keves Leonard
Email: marshall.shaffer@kirkland.com; kathryn.leonard@kirkland.com

SIXTH STREET SPECIALTY LENDING, INC., as
Administrative Agent and a Lender

Administrative Agent's Principal Office:
888 7th Avenue, 35th Floor
New York, NY 10106
Attention: Parker Hooper
Facsimile: 212-430-4628
Email: TSLAccounting@tpg.com

with a copy to:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036
Attention: Frederic L. Ragucci
Email: fragucci@proskauer.ccom

3 NTD: To be confirmed.

TOP IV TALENTS, LLC and TAO
TALENTS, LLC
as Lenders

2100 McKinney Avenue, Suite 1030
Dallas, Texas 75201
Attention: TSSPOps
Facsimile: 415-486-5930

with a copy to:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036
Attention: Frederic L. Ragucci
Email: fragucci@proskauer.ccom

APPENDIX ~~B~~A

[Schedule 5.13
Post-Closing Matters]

1. Not later than the date that is 15 Business Days after the Closing Date, Administrative Agent shall have received endorsements naming Administrative Agent, for the benefit of Secured Parties, as additional insured and loss payee under the Loan Parties' insurance policies to the extent required ~~under Section 5.5.~~

2. The Loan Parties shall obtain and deliver to Administrative Agent a Control Agreement for the Specified Deposit Accounts not later than the date that is 2 Business Days following the Closing ~~Date.~~.

3. Not later than the date that is 30 days following the Closing Date the Loan Parties shall use commercially reasonable efforts to obtain and deliver to Administrative Agent (a), in each case where Collateral with a book value in excess of $500,000 (or, solely with respect to any Collateral that is on consignment with Walmart Inc. or any of its affiliates, $1,000,000) (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now existing or acquired after the Closing Date), a Collateral Access Agreement executed by the applicable Loan Party and (i) the landlord of any Leasehold Property or (ii) the bailee, warehouseman or similar party in respect of the real property where such Collateral is stored and (b) Control Agreements for all Deposit Accounts (other than the Specified Deposit Accounts and any Excluded ~~Accounts) and Security Accounts maintained by a Loan Party in the United States.~~

4. Not later than the date that is 45 days following the Closing Date the Loan Parties shall obtain an excess liability policy that includes coverage for the Loan Parties' general liability, automotive liability and employer's liability insurance policies, which excess liability policy shall include coverage ~~limits and terms substantially similar to the excess liability policy in effect as of the Closing Date.~~

5. Not later than the date that is 5 Business Days after the Closing Date, the Loan Parties shall have (a) delivered to Administrative Agent evidence that VitaMedMD LLC has irrevocably opted into Article 8 of the UCC and caused the membership interests therein to be deemed to be securities for purposes of Article 8 of the UCC, (b) caused such membership interests to be certificated and (c) delivered such certificated securities (along with appropriate instruments of transfer) to Administrative ~~Agent.~~

[TBD]

APPENDIX ~~B~~A

**ANNEX B**

**FORM OF CONVERSION/CONTINUATION NOTICE**

**(See Attached)**

**TherapeuticsMD and EW Healthcare Partners**
**Announce Definitive Agreement for EW Healthcare Partners to acquire TherapeuticsMD**

**BOCA RATON, Fla. – May 31, 2022** -- TherapeuticsMD, Inc. (NASDAQ: TXMD) ("TherapeuticsMD," "TXMD" or the "Company"), an innovative, leading women's healthcare company, today announced that it has entered into a definitive merger agreement to be acquired by an affiliate of EW Healthcare Partners, a private equity firm dedicated to making investments in rapidly growing healthcare companies.

Under the terms of the transaction, which has been unanimously approved by TXMD's board of directors, EW Healthcare Partners will commence a tender offer to acquire all outstanding shares of TXMD common stock for $10.00 per share in an all-cash transaction, followed immediately by a merger. The purchase price represents a premium of 367.3% over TherapeuticsMD's closing share price on May 27, 2022.

"We are very pleased to enter into this agreement with EW Healthcare Partners," stated Hugh O'Dowd, Chief Executive Officer of TherapeuticsMD. "Together, we will continue empowering women of all ages through a therapeutic focus in family planning, reproductive health, and menopause management. We have a deep appreciation for EW Healthcare Partners's depth of expertise and track record and know they will bring an incredible value of knowledge and strategic guidance."

EW Healthcare Partners is one of the largest and oldest private healthcare investment firms with over $4B of capital raised since its inception. EW Healthcare Partners has made investments in over 150 rapidly growing healthcare companies in the pharmaceutical, medical device, diagnostics, and technology-enabled services sectors in the United States and in Europe.

"We are pleased to welcome TherapeuticsMD to the EW Healthcare Partners portfolio and are deeply committed to the Company's mission of advancing women's health. EW Healthcare Partners has already made a significant investment in women's health through its acquisition of Majorelle. TherapeuticsMD represents a unique opportunity for Majorelle to enter the US market and is a perfect fit with our ambitious plans to create a fast-growing, premier trans-Atlantic women's health platform. We bring an extensive network and capital to fund the further growth of the combined company." said Evis Hursever, Managing Director at EW Healthcare Partners.

"We look forward to working together with the company's management team to enhance the patient experience, improve operational efficiency and create one of a very few trans-Atlantic specialty pharma companies dedicated to women's health," said Olivier Bohuon, Senior Adviser with EW Healthcare Partners and Chairman of Majorelle.

**Transaction Details**

The transaction, which has been unanimously approved by TherapeuticsMD's Board of Directors, implies a total enterprise value for the Company of approximately $177 million and will be structured as an all-cash tender offer to acquire all issued and outstanding shares of TherapeuticsMD common stock, followed immediately by a merger.

Under the terms of the agreement, an affiliate of EW Healthcare Partners will commence a tender offer to acquire all issued and outstanding shares of TherapeuticsMD common stock at a price of $10.00 per share. The tender offer will initially remain open for 20 business days from the date of commencement of the tender offer, subject to extension under certain circumstances.

The price represents a 367.3% premium over TherapeuticsMD's closing share price of $2.14 on May 27, 2022 and a premium of 211.8% to TherapeuticsMD's 30-day volume weighted average share price on May 27, 2022.

Following a successful completion of the tender offer, including meeting certain conditions, the EW Healthcare Partners affiliate will acquire all remaining untendered shares of TherapeuticsMD common stock at the same price of $10.00 per share through a second step merger.

In connection with entering into the transaction, the lenders and administrative agent under the Company's Financing Agreement with Sixth Street Partners have agreed to extend the maturity date of the Financing Agreement to July 13, 2022, allowing the Company to complete the transaction with EW Healthcare Partners on or before that date. In addition, the lenders and administrative agent have agreed to roll-over the Company's indebtedness under the Financing Agreement in connection with, and conditioned on, the closing of the merger.

Closing of the tender offer and merger are subject to certain conditions, including that a majority of the shares of TherapeuticsMD's common stock are tendered and not withdrawn in the tender offer, that there is no default or event of default under the Company's Financing Agreement, and other customary closing conditions. Upon completion of the transaction, TherapeuticsMD will become a privately held company and shares of TherapeuticsMD's common stock will no longer be listed on any public market. The parties anticipate that the combination will be completed on or before July 13, 2022.

**Advisors**

Greenhill & Co., LLC is serving as financial advisor and DLA Piper LLP (US) is serving as legal counsel to TherapeuticsMD.

EW Healthcare Partners was advised by Kirkland & Ellis (Legal), PwC (financial and tax) and BCG (commercial).

**About TherapeuticsMD, Inc.**

TherapeuticsMD, Inc. is an innovative, leading healthcare company, focused on developing and commercializing novel products exclusively for women. TherapeuticsMD's products are designed to address the unique changes and challenges women experience through the various stages of their lives with a therapeutic focus in family planning, reproductive health, and menopause management. TherapeuticsMD is committed to advancing the health of women and championing awareness of their healthcare issues. To learn more about TherapeuticsMD, please visit https://www.therapeuticsmd.com/ or follow us on Twitter: @TherapeuticsMD and on Facebook: TherapeuticsMD.

**About EW Healthcare Partners ("EW")**

With over $4 billion raised since inception, EW Healthcare Partners is one of the largest and oldest private healthcare investment firms and seeks to make growth equity investments in fast growing commercial-stage healthcare companies in the pharmaceutical, medical device, diagnostics, and technology-enabled services sectors in the United States and in Europe. Since its founding in 1985, EW Healthcare Partners has maintained its singular commitment to the healthcare industry and has been a long-term investor in over 150 healthcare companies, ranging across sectors, stages and geographies. The team is comprised of over 20 senior investment professionals with offices in New York, Houston and London. https://www.ewhealthcare.com/

**Cautionary Notes Regarding Forward Looking Statements**

Certain statements in this communication, including, without limitation, statements regarding the proposed transaction, plans and objectives, and management's beliefs, expectations or opinions, may contain forward-looking information within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to future, not past, events and often address expected future actions and expected future business

and financial performance. Forward-looking statements may be identified by the use of words such as “believe,” “will,” “should,” “estimate,” “anticipate”, “potential,” “expect,” “intend,” “plan,” “may,” “subject to,” “continues,” “if” and similar words and phrases. These forward-looking statements are not guarantees of future events and involve risks, uncertainties and assumptions that are difficult to predict.

Actual results, developments and business decisions may differ materially from those expressed or implied in any forward-looking statements as a result of numerous factors, risks and uncertainties over which the Company or EW Healthcare Partners, as applicable, have no control. These factors, risks and uncertainties include, but are not limited to, the following: (1) the conditions to the completion of the proposed transaction may not be satisfied, including uncertainties as to how many of the Company’s stockholders will tender their shares in the tender offer and the possibility that if the transaction does not close by July 13, 2022, or the Company is unable to satisfy the minimum qualified cash covenant under the Company’s Financing Agreement, it will constitute an event of default under the Company’s Financing Agreement and the Company may not continue as a going concern; (2) the parties’ ability to complete the proposed transaction contemplated by the Merger Agreement in the anticipated timeframe or at all; (3) the occurrence of any event, change or other circumstance that could give rise to the termination of the transaction agreement between the parties to the proposed transaction (including that if the transaction agreement is terminated it is an event of default under the Company’s Financing Agreement and the Company may not continue as a going concern); (4) the effect of the announcement or pendency of the proposed transaction on business relationships, operating results, and business generally; (5) risks that the proposed transaction disrupts current plans and operations and potential difficulties in employee retention as a result of the proposed transaction; (6) risks related to diverting management’s attention from ongoing business operations; (7) the outcome of any legal proceedings that may be instituted related to the proposed transaction or the transaction agreement between the parties to the proposed transaction; (8) the amount of the costs, fees, expenses and other charges related to the proposed transaction; (9) the risk that competing offers or acquisition proposals will be made; (10) general economic conditions, particularly those in the life science and medical device industries; (11) stock trading prices, including the impact of the proposed transaction on the Company’s stock price and the corresponding impact that failure to close the proposed transaction would be expected to have on the Company’s stock price, particularly in relation to the Company’s current and future capital needs and its ability to raise additional funds to finance its future operations in the event the proposed transaction does not close; (12) the participation of third parties in the consummation of the proposed transaction; and (13) other factors discussed from time to time in the reports of the Company filed with the Securities and Exchange Commission (the “SEC”), including the risks and uncertainties contained in the sections titled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in the Company’s most recent Annual Report on Form 10-K, as filed with the SEC on March 23, 2022, and related sections in the Company’s subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, all of which are available free of charge at http://www.sec.gov or under the “Investors & Media” section on the Company’s website at www.therapeuticsmd.com.

Forward-looking statements reflect the views and assumptions of management as of the date of this communication with respect to future events. The Company does not undertake, and hereby disclaims, any obligation, unless required to do so by applicable laws, to update any forward-looking statements as a result of new information, future events or other factors. The inclusion of any statement in this communication does not constitute an admission by the Company or any other person that the events or circumstances described in such statement are material.

**Additional Information about the Transaction and Where to Find It**

The tender offer has not yet commenced. This communication is neither an offer to buy nor a solicitation of an offer to sell any securities of the Company, nor is it a recommendation by the Company, its management or Board of Directors that any investors sell or otherwise tender any securities of the Company in connection with the transactions described elsewhere in this communication. The solicitation and the offer to buy shares of the Company’s common stock will only be made pursuant to a tender offer statement on Schedule TO, including an offer

to purchase, a letter of transmittal and other related materials that an affiliate of EW Healthcare Partners intends to file with the SEC. In addition, the Company will file with the SEC a Recommendation Statement on Schedule 14D-9 with respect to the tender offer. Once filed, investors will be able to obtain the tender statement on Schedule TO, the offer to purchase, the Recommendation Statement of the Company on Schedule 14D-9 and related materials filed with the SEC with respect to the tender offer and the merger, free of charge at the website of the SEC at www.sec.gov or from the information agent named in the tender offer materials. Investors may also obtain, at no charge, the documents filed with or furnished to the SEC by the Company under the "Investors & Media" section of the Company's website at www.therapeuticsmd.com. Investors are advised to read these documents when they become available, including the Recommendation Statement of the Company and any amendments thereto, as well as any other documents relating to the tender offer and the merger that are filed with the SEC, carefully and in their entirety prior to making any decisions with respect to whether to tender their shares in the tender offer because such documents contain important information, including the terms and conditions of the tender offer.

**Contact**

For TherapeuticsMD:

Lisa M. Wilson
In-Site Communications, Inc.
212-453-2793
lwison@insitecony.com

TherapeuticsMD
561-961-1900
IR@TherapeuticsMD.com